FEDERAL RECLAMATION AND RELATED LAWS ANNOTATED

VOLUME IV OF FOUR VOLUMES
1967—1982

UNITED STATES DEPARTMENT OF THE INTERIOR
Donald Paul Hodel, *Secretary*

OFFICE OF THE SOLICITOR
Ralph W. Tarr, *Solicitor*

BUREAU OF RECLAMATION
C. Dale Duvall, *Commissioner*

Louis D. Mauro
Richard K. Pelz
Editors

UNITED STATES GOVERNMENT PRINTING OFFICE

DENVER : 1989

For sale by the Superintendent of Documents, U.S. Goverment Printing Office, Washington, D.C. 20402, and the Bureau of Reclamation, Denver Federal Center, Denver, Colo. 80225, Attention: D-7923A.

PREFACE

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

The publication at this time of two additional volumes, Volume IV and Supplement I, brings that legal history up to date through 1982.

The Department also is publishing as a separate volume a compilation of legal materials issued through mid-1988 that deal with the Reclamation Reform Act of 1982, as amended.

DONALD PAUL HODEL
Secretary of the Interior

FOREWORD

This Volume IV, together with Supplement I to Volumes I, II and III, published as a separate volume, brings "Federal Reclamation and Related Laws Annotated" up to date through 1982.

Volume IV contains the statutes, compacts and treaties enacted or approved from 1967 through 1982 that directly affect the program responsibilities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern and Western Area Power Administrations of the Department of Energy, together with other selected laws or compacts that relate to these programs. Two 1966 statutes are included that were inadvertently omitted from Volume III—the Great Salt Lake Relicted Lands Act and the National Historic Preservation Act of 1966.

Volume IV also includes annotations of court decisions and opinions of the Department of the Interior, the Department of Energy, the Comptroller General, the Attorney General, the Commissioner of Internal Revenue, the Federal Power Commission and the Federal Energy Regulatory Commission that interpret such laws and are deemed relevant to the programs and activities of the Bureau of Reclamation or the power administrations. Opinions of field attorneys are not annotated unless they have been endorsed by the Department.

Supplement I contains amendments to laws included in the first three volumes as well as annotations of agency and judicial opinions issued from 1967 through 1982 that interpret those laws. Accordingly, when reference is made in Volume IV to an act contained in Volumes I-III, Supplement I should be consulted to determine whether the statute referred to has been amended at any time between 1967 and 1982.

The cut-off date for all material is December 31, 1982; however, when an initial decision in a lawsuit entered before that date is annotated, an effort has been made to indicate subsequent decisions in that litigation. All citations to the U.S. Code are to the 1982 edition, except for the Appendix, which includes revisions to the Code through 1985.

A new Appendix is included in Supplement I. It sets forth certain administrative statutes of general application that are referred to frequently by program administrators and attorneys.

A combined Index covering all of the material in Volume IV and any new material in the Supplement not cited in the original index in Volume III is also contained in Supplement I.

The pages in Volumes I, II and III are numbered sequentially, from page 1 through 2211. The pages in Volume IV are numbered beginning with page 2301. The pages in Supplement I are numbered S1, S2, and so on.

As with the first three volumes, the basic order of appearance is chronological. Acts of Congress are shown by the date of enactment, interstate compacts by the date of the Act giving Congressional consent thereto, and Treaties by the date of signing. Provisions which are repeated in annual appropriations acts are shown under the date of first appearance.

A distinction in the treatment of acts has been made between those that deal primarily with the programs and activities of the Bureau of Reclamation and the power administrations and those that are related only secondarily to such programs and activities. The principal difference is that amendments to primary statutes are also included separately by their date of enactment, whereas amendments to secondary statutes are not separately included.

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.

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.

LOUIS D. MAURO
RICHARD K. PELZ
Editors

Washington, D.C.
July 1988

Secretaries of the Interior, 1967-1988

Name	*Year Appointed*	*Name*	*Year Appointed*
Stewart L. Udall	1961	Cecil D. Andrus	1977
Walter J. Hickel	1969	James G. Watt	1981
Rogers C.B. Morton	1971	William P. Clark	1983
Stanley K. Hathaway	1975	Donald Paul Hodel	1985
Thomas S. Kleppe	1975		

Solicitors, Department of the Interior, 1967-1988

Name	*Year Appointed*	*Name*	*Year Appointed*
Frank J. Barry	1961	Leo M. Krulitz	1977
Edward Weinberg	1968	Clyde O. Martz	1980
Mitchell Melich	1969	William H. Coldiron	1981
Kent Frizzell	1973	Frank K. Richardson	1984
H. Gregory Austin	1975	Ralph W. Tarr	1985

Commissioners of Reclamation, 1967-1988

Name	*Year Appointed*	*Name*	*Year Appointed*
Floyd E. Dominy	1959	Robert N. Broadbent	1981
Ellis L. Armstrong	1969	Robert A. Olson (Acting)	1983
Gilbert G. Stamm	1973	Clifford I. Barrett (Acting)	1985
R. Keith Higginson	1977	C. Dale Duvall	1985

Secretaries of Energy, 1977-1988

Name	*Year Appointed*	*Name*	*Year Appointed*
James R. Schlesinger	1977	Donald Paul Hodel	1982
Charles W. Duncan, Jr	1979	John S. Herrington	1985
James B. Edwards	1981		

General Counsels, Department of Energy, 1977-1988

Name	*Year Appointed*	*Name*	*Year Appointed*
Lynn R. Coleman	1978	Theodore J. Garrish	1983
Eric J. Fygi (Acting)	1980	J. Michael Farrell	1985
R. Tenney Johnson	1981	Eric J. Fygi (Acting)	1987

TABLE OF CONTENTS

VOLUME IV

Acts of 89th Congress

1966			*Page*
June 3.....	Pub. L. 89-441	Great Salt Lake Relicted Lands.	2301
Oct. 15....	Pub. L. 89-665	National Historic Preservation Act of 1966.	2304

Acts of 90th Congress

1967			
May 19....	Pub. L. 90-18...	Metropolitan Water District Desalting Plant.	2329
July 4.....	Pub. L. 90-46..	Garrison Dam, Lake Sakakawea (Extract).	2331
Aug. 19...	Pub. L. 90-65..	Amend Sacramento Valley Canals Act.	2332
Aug. 27...	Pub. L. 90-72...	San Felipe Division, Central Valley Project.	2333
Sept. 22...	Pub. L. 90-89..	Increased Authorization, Missouri River Basin Project.	2336
Nov. 14....	Pub. L. 90-136	Nebraska Mid-State Division, Missouri River Basin Project.	2337
Nov. 15....	Pub. L. 90-138	Conveyance of Mineral Rights to City of Needles.	2339
Nov. 16....	Pub. L. 90-143	Ft. Peck Indian Reservation, Cancellation of Construction Costs.	2340
Nov. 20....	Pub. L. 90-147	Public Works and Atomic Energy Commission Appropriation Act, 1968 (Extracts).	2341
Dec. 29....	Pvt. L. 90-195..	Relief of Navarro.	2342
1968			
Feb. 13....	Pub. L. 90-254	Feasibility Studies.	2343
Mar. 2.....	Pub. L. 90-260	Credits to Kings River Water Association.	2344
Mar. 21....	Pub. L. 90-270	Lake Oahe.	2345
Mar. 22...	Pub. L. 90-272	Water Delivery Contracts, Navajo Reservoir.	2346
Apr. 24....	Pvt. L. 90-212..	Relief of Adams, et al.	2348
May 18....	Pub. L. 90-311	Amended Contract, Foss Reservoir Master Conservancy District.	2349

Acts of 90th Congress

1968			*Page*
May 24	Pub. L. 90-315	Increased Authorization, Missouri River Basin Project.	2351
July 13.....	Pub. L. 90-400	Severance Payments, Interior Employees.	2352
Aug. 1	Pub. L. 90-448	National Flood Insurance Act of 1968 (Extracts).	2353
Aug. 3	Pub. L. 90-453	Oahe Unit, Missouri River Basin Project.	2376
Aug. 3	Pub. L. 90-454	Estuaries Studies and Planning.	2379
Aug. 12 ...	Pub. L. 90-479	Public Works for Water and Power Resources Development and Atomic Energy Commission Appropriation Act, 1969 (Extracts).	2383
Aug. 13 ...	Pub. L. 90-483	Flood Control Act of 1968 (Extracts).	2385
Sept. 21 ...	Pub. L. 90-503	Mountain Park Project.	2388
Sept. 26...	Pub. L. 90-515	National Water Commission Act.	2391
Sept. 26...	Pub. L. 90-523	Rehabilitation of Eklutna Project.	2394
Sept. 30...	Pub. L. 90-537	Colorado River Basin Project Act.	2395
Oct. 1.....	Pub. L. 90-540	Flaming Gorge National Recreation Area.	2425
Oct. 2.....	Pub. L. 90-542	Wild and Scenic Rivers Act.	2428
Oct. 12....	Pub. L. 90-562	Palmetto Bend Project.	2463
Oct. 17....	Pub. L. 90-591	Exchange of Lands in Shasta County.	2467

Acts of 91st Congress

1969			
Aug. 4.....	Pub. L. 91-52...	Upper Niobrara River Compact.	2468
Aug. 25...	Pub. L. 91-66...	Kennewick Division Extension.	2474
Sept. 26...	Pvt. L. 91-45....	Relief of Adriance, et al.	2476
Oct. 8.....	Pub. L. 91-81...	Feasibility Studies.	2478
Dec. 11....	Pub. L. 91-144	Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1970 (Extracts).	2479
Dec. 18....	Pub. L. 91-148	Tahoe Regional Planning Compact.	2482
1970			
Jan. 1.....	Pub. L. 91-190	National Environmental Policy Act of 1969.	2492
Mar. 25 ...	Pub. L. 91-218	Increased Authorization, Missouri River Basin Project.	2512
April 3.....	Pub. L. 91-224	Environmental Quality Improvement Act of 1970 (Extracts).	2513

Acts of 91st Congress

1970			*Page*
May 14	Pub. L. 91-251	Ft. Belknap Indian Irrigation Project.	2516
May 28	Pub. L. 91-270	Merlin Division, Rogue River Basin Project.	2517
June 19....	Pub. L. 91-282	Tocks Island Pumped Storage (Extracts).	2520
June 23....	Pub. L. 91-286	East Greenacres Unit, Rathdrum Prairie Project.	2522
July 7.....	Pub. L. 91-307	Touchet Division, Walla Walla Project.	2525
July 7.....	Pub. L. 91-310	Exemption of Certain State-Owned Lands from Excess Land Laws.	2528
July 16.....	Pub. L. 91-336	Coalinga Canal.	2530
July 22.....	Pvt. L. 91-119..	Release of Canal Rights of Way, Malin, Oregon.	2531
Aug. 28...	Pub. L. 91-389	Narrows Unit, Missouri River Basin Project.	2532
Sept. 25...	Pub. L. 91-408	Supplemental Irrigation Facilities, Yuma Mesa Division.	2535
Sept. 25...	Pub. L. 91-409	Riverton Unit, Missouri River Basin Project (Riverton Extension Unit Reauthorized).	2536
Sept. 25...	Pub. L. 91-415	Minot Extension, Garrison Diversion Unit.	2539
Sept. 25...	Pub. L. 91-416	Amend Navajo Indian Irrigation Project Act.	2542
Sept. 26...	Pub. L. 91-425	Study of Lake Tahoe National Lakeshore.	2544
Oct. 7.....	Pub. L. 91-439	Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Extracts).	2546
Oct. 23....	Pub. L. 91-502	Integration of Black Butte Project with Central Valley Project.	2549
Oct. 23....	Pub. L. 91-505	Defenses Against Land Claims by United States in Riverside County.	2550
Dec. 17....	Pvt. L. 91-205..	Relief of Beasley Engineering Company, Inc.	2552
Dec. 17....	Pub. L. 91-557	Soboba Indian Reservation, California—Release of Claim Annexation and Water Service Agreements.	2553
Dec. 19....	Pub. L. 91-559	Water Bank Act.	2558
Dec. 24....	Pub. L. 91-575	Susquehanna River Basin Compact.	2563
Dec. 24....	Pub. L. 91-576	Pick-Sloan Missouri Basin Program.	2601
Dec. 24....	Pub. L. 91-581	Geothermal Steam Act of 1970.	2602
Dec. 31....	Pub. L. 91-611	River and Harbor and Flood Control Acts of 1970 (Extracts).	2614

Acts of 91st Congress

1971			*Page*
Jan. 2.....	Pub. L. 91-646	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Extracts).	2617

Acts of 92nd Congress

Oct. 5.....	Pub. L. 92-134	Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1972 (Extracts).	2634
Oct. 27....	Pvt. L. 92-31 ...	Convey Lands to Central Dakota Nursing Home.	2635
Oct. 29....	Pub. L. 92-146	Fish and Wildlife Operation, Kortes Unit.	2637
Oct. 29....	Pub. L. 92-147	Amended Contract with San Angelo Water Supply Corporation.	2638
Oct. 29....	Pub. L. 92-149	Certain Study Costs Nonreimbursable.	2639
Nov. 5.....	Pvt. L. 92-34 ...	Conveyance to Successors of McNeil.	2640
Nov. 24....	Pub. L. 92-167	Amend Small Reclamation Projects Act.	2641
Dec. 15....	Pub. L. 92-199	Feasibility Studies.	2643
Dec. 18....	Pub. L. 92-205	Weather Modification Reporting.	2644
Dec. 23....	Pub. L. 92-222	River Basin Monetary Authorization Act of 1971 (Extracts).	2646
1972			
June 2.....	Pub. L. 92-308	Kansas-Nebraska Big Blue River Compact.	2647
Aug. 8.....	Pub. L. 92-367	National Dam Inspection Program.	2655
Aug. 10...	Pub. L. 92-370	Increased Authorization, Upper Colorado River Basin.	2657
Aug. 10...	Pub. L. 92-371	Increased Authorization, Missouri River Basin.	2658
Aug. 10...	Pub. L. 92-378	Defer Charges for Naval Air Station Lands.	2659
Oct. 13....	Pub. L. 92-487	Amend Distribution System Loans Act.	2661
Oct. 18....	Pub. L. 92-500	Federal Water Pollution Control Act (Clean Water Act) (Extracts).	2664
Oct. 20....	Pub. L. 92-514	Reclamation Project Authorization Act of 1972.	2748
Oct. 25....	Pub. L. 92-549	American-Mexican Boundary Treaty Act of 1972.	2761
Oct. 27....	Pub. L. 92-577	Feasibility Studies.	2765
Oct. 27....	Pub. L. 92-593	Glen Canyon National Recreation Area.	2766

Acts of 93rd Congress

1973			*Page*
Aug. 16 ...	Pub. L. 93-97 ..	Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act. 1974 (Extracts).	2770
Oct. 9	Pub. L. 93-122	Feasibility Studies.	2771
Oct. 18	Pvt. L. 93-8	Relief of Adler Construction Co.	2772
Nov. 13....	Pub. L. 93-152	Arkansas River Basin Compact (Arkansas and Oklahoma).	2773
Dec. 28....	Pub. L. 93-205	Endangered Species Act of 1973 (Extracts).	2782
Dec. 28....	Pub. L. 93-206	American Falls Dam Replacement.	2828
Dec. 28....	Pub. L. 93-217	H.V. Eastman Lake.	2832
1974			
Mar. 7	Pub. L. 93-251	Water Resources Development Act of 1974 (Extracts).	2833
May 22	Pub. L. 93-288	Disaster Relief Act of 1974 (Extracts).	2843
June 24....	Pub. L. 93-320	Colorado River Basin Salinity Control Act.	2857
July 12.....	Pub. L. 93-344	Impoundment Control Act of 1974.	2877
Aug. 28 ...	Pub. L. 93-393	Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1975 (Extracts).	2886
Oct. 17	Pub. L. 93-447	Sumner Dam and Lake Sumner.	2887
Oct. 18	Pub. L. 93-454	Federal Columbia River Transmission System Act.	2888
Oct. 27	Pub. L. 93-493	Reclamation Development Act of 1974.	2898
Dec. 31	Pub. L. 93-575	Transfer Lands, Arapaho National Forest.	2918
Dec. 31	Pub. L. 93-578	Convey Land, Yuma County.	2919
1975			
Jan. 2.....	Pub. L. 93-603	Hensley Lake.	2921
Jan. 2.....	Pub. L. 93-608	Discontinue Certain Reporting Requirements (Extracts).	2922
Jan. 3.....	Pub. L. 93-620	Grand Canyon National Park Enlargement Act (Extracts).	2924

Acts of 94th Congress

Aug. 9	Pub. L. 94-77 ..	Tom Steed Reservoir.	2926
Oct. 3	Pub. L. 94-102	Amend Rehabilitation and Betterment Act.	2927

Acts of 94th Congress

1975			*Page*
Dec. 16....	Pub. L. 94-156	Feasibility Studies.	2928
Dec. 23....	Pub. L. 94-175	Amend Touchet Division, Walla Walla Project Act.	2929
Dec. 26....	Pub. L. 94-180	Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1976 (Extracts).	2930
Dec. 27....	Pub. L. 94-181	Amend Small Reclamation Projects Act.	2932
1976			
Mar. 11....	Pub. L. 94-228	Reclamation Authorization Act of 1975.	2934
July 12.....	Pub. L. 94-355	Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1977 (Extracts).	2941
Sept. 7.....	Pub. L. 94-400	Teton Dam Disaster Assistance Act.	2943
Sept. 17...	Pub. L. 94-415	Repair of Del City Aqueduct.	2949
Sept. 28...	Pub. L. 94-423	Reclamation Authorizations Act of 1976.	2950
Oct. 1.....	Pub. L. 94-442	Amended Contract with Santa Ynez River Water Conservation District.	2961
Oct. 21....	Pub. L. 94-579	Federal Land Policy and Management Act.	2962
Oct. 22....	Pub. L. 94-587	Water Resources Development Act of 1976 (Extracts).	3026

Acts of 95th Congress

1977			
Apr. 7.....	Pub. L. 95-18..	Emergency Drought Relief Measures.	3032
May 13....	Pub. L. 95-28..	Public Works Employment Act of 1977 (Extracts).	3038
June 15....	Pub. L. 95-46..	San Luis Unit Study.	3041
Aug. 2.....	Pub. L. 95-84..	Demonstration of Membrane and Phase Change Desalting Processes (Extracts).	3044
Aug. 4.....	Pub. L. 95-91..	Department of Energy Organization Act (Extracts).	3048
Aug. 7.....	Pub. L. 95-96..	Public Works for Water and Power Development and Energy Research Appropriation Act, 1978.	3076
Nov. 18....	Pub. L. 95-192	Soil and Water Resources Conservation Act of 1977.	3078

Acts of 95th Congress

1978			*Page*
Feb. 15	Pub. L. 95-230	Pueblo Indian Irrigation Charges, Middle Rio Grande Conservancy District.	3083
July 28.....	Pub. L. 95-328	Settlement of Ak-Chin Indian Water Rights Claims.	3084
Sept. 17 ...	Pub. L. 95-367	National Climate Program Act (Extracts).	3088
Sept. 30 ...	Pub. L. 95-399	Salt River Pima-Maricopa Indian Reservation Boundary.	3094
Oct. 13	Pub. L. 95-456	SWPA Rate Discrimination.	3099
Oct. 14	Pub. L. 95-460	Agricultural Foreign Investment Disclosure Act of 1978.	3100
Oct. 17	Pub. L. 95-465	Department of the Interior and Related Agencies Appropriation Act, 1979 (Extracts).	3105
Oct. 17	Pub. L. 95-467	Water Research and Development Act of 1978 (Extracts).	3107
Oct. 18	Pub. L. 95-482	Continuing Appropriations Act, 1979 (Extracts).	3124
Nov. 2.....	Pub. L. 95-578	Reclamation Safety of Dams Act of 1978.	3127
Nov. 3.....	Pub. L. 95-586	Amend Fryingpan-Arkansas Project.	3131
Nov. 8.....	Pub. L. 95-616	Fish and Wildlife Improvement Act (Extracts).	3133
Nov. 9.....	Pub. L. 95-617	Public Utility Regulatory Policies Act of 1978 (Extracts).	3137

Acts of 96th Congress

1979			
Sept. 25 ...	Pub. L. 96-69 ..	Energy and Water Development Appropriation Act, 1980 (Extracts).	3168
Oct. 31	Pub. L. 96-95 ..	Archaeological Resources Protection Act.	3170
Dec. 28....	Pub. L. 96-162	Feasibility Study, Yakima River Basin Water Enhancement Project.	3180
Dec. 29....	Pub. L. 96-172	Lake Texana.	3181
1980			
Feb. 3	Pub. L. 96-189	Amend Bear River Compact.	3182
July 2.....	Pub. L. 96-301	Protection of Archaeological Resources, Animas-LaPlata and Dolores Projects.	3196
July 9.....	Pub. L. 96-309	Lining of Bessemer Ditch.	3197

Acts of 96th Congress

1980			*Page*
Sept. 4.....	Pub. L. 96-335	Trinity River Stream Rectification	3198
Sept. 4.....	Pub. L. 96-336	Amend Colorado River Basin Salinity Control Act; Amend Small Reclamation Projects Act.	3200
Sept. 8.....	Pub. L. 96-345	Wind Energy Systems Act of 1980 (Extracts).	3204
Sept. 24...	Pub. L. 96-355	WEB Rural Water Development Project.	3207
Sept. 29...	Pub. L. 96-366	Fish and Wildlife Conservation Act (Extracts).	3209
Oct. 1.....	Pub. L. 96-367	Energy and Water Development Appropriation Act, 1981 (Extracts).	3214
Oct. 3.....	Pub. L. 96-375	Feasibility Studies.	3216
Oct. 19....	Pub. L. 96-470	Congressional Reports Elimination Act of 1980 (Extract).	3221
Dec. 3.....	Pub. L. 96-495	Suisun Marsh Preservation and Restoration Act of 1979.	3222
Dec. 5.....	Pvt. L. 96-70...	Milner Dam Project, Idaho	3224
Dec. 5.....	Pub. L. 96-501	Pacific Northwest Electric Power Planning and Conservation Act.	3225
Dec. 19....	Pub. L. 96-550	Relief of the Vermejo Conservancy District (Extract).	3274
Dec. 19....	Pub. L. 96-551	Tahoe Regional Planning Compact.	3276
Dec. 22....	Pub. L. 96-564	Red River Compact (Arkansas, Louisiana, Oklahoma, Texas).	3299
Dec. 22....	Pub. L. 96-570	Sacramento Valley Canals, Extension of Service Area.	3317
Dec. 22....	Pub. L. 96-571	Alaska Federal-Civilian Energy Efficiency Swap Act of 1980.	3319

Acts of 97th Congress

1981			
Aug. 14...	Pub. L. 97-41..	Amend Palo Verde Diversion Dam Act.	3322
Dec. 4.....	Pub. L. 97-88..	Energy and Water Development Appropriation Act, 1982 (Extracts).	3323
Dec. 29....	Pub. L. 97-140	San Juan-Chama Project Water.	3325
1982			
Sept. 30...	Pub. L. 97-273	South Dakota Projects; Pick-Sloan Pumping Power.	3327
Oct. 1.....	Pub. L. 97-275	Amend Emergency Fund Act.	3330
Oct. 2.....	Pub. L. 97-276	Continuing Appropriations, 1983 (Extracts).	3331

Acts of 97th Congress

1982			*Page*
Oct. 12	Pub. L. 97-293	Buffalo Bill Dam and Reservoir Modifications, Reclamation Reform Act of 1982, Southern Arizona Water Rights Settlement Act of 1982.	3332
Oct. 15	Pub. L. 97-338	Platte River Water Resource Use and Development Study.	3362
Dec. 20....	Pub. L. 97-373	Amend Colorado River Basin Project Act.	3364
Dec. 21....	Pub. L. 97-375	Congressional Reports Elimination Act of 1982 (Extracts).	3365
Dec. 21....	Pub. L. 97-377	Further Continuing Appropriations, 1983 (Extracts).	3366
Dec. 22....	Pub. L. 97-381	Robert B. Griffith Water Project.	3368

SUPPLEMENT I

1967-1982 SUPPLEMENT TO VOLUMES I-III

Page

Volume I S1
Volume II S143
Volume III S291

APPENDIX

Selected administrative and other laws taken from the United States Code (as codified through 1985) S429

INDEX

Combined index to Volume IV and Supplement I S687

GREAT SALT LAKE RELICTED LANDS

An act to authorize conveyance of certain lands to the State of Utah based upon fair market value. (Act of June 3, 1966, Public Law 89-441, 80 Stat. 192)

Editor's Note: This Act was inadvertently omitted from Volume III.

[Sec. 1. Completion of survey.]—The Secretary of the Interior shall within six months of the date of the passage of this Act complete the public land survey around the Great Salt Lake in the State of Utah by closing the meander line of that Lake, following as accurately as possible the mean high water mark of the Great Salt Lake used in fixing the meander line on either side of the unsurveyed area. (80 Stat. 192)

Sec. 2. [Conveyance authorized—Conditions.]—Subject to the other provisions of this Act, the Secretary of the Interior shall by quitclaim deed convey to the State of Utah all right, title, and interest of the United States in lands including brines and minerals in solution in the brines or precipitated or extracted therefrom, lying below the meander line of the Great Salt Lake in such State, as duly surveyed heretofore or in accordance with section 1 of this Act, whether such lands now are or in the future may become uncovered by the recession of the waters of said lake: *Provided, however,* That the provisions of this Act shall not affect (1) any valid existing rights or interests, if any, of any person, partnership, association, corporation, or other nongovernmental entity, in or to any of the lands within and below said meander line, or (2) any lands within the Bear River Migratory Bird Refuge and the Weber Basin Federal reclamation project. Such conveyance shall be made when the survey required by section 1 has been completed and the agreement required by section 6 has been made. (80 Stat. 192)

Sec. 3. [Mineral reservation.]—The conveyance authorized by this Act shall contain an express reservation to the United States of all minerals, except brines and minerals in solution in the brines, or precipitated or extracted therefrom in whatever Federal lands there may be below the meander line of Great Salt Lake, together with the right to prospect for, mine, and remove the same. The minerals thus reserved shall thereupon be withdrawn from appropriation under the public land laws of the United States, including the mining laws, but said minerals, in the discretion of the Secretary of the Interior, may be disposed of under any of the provisions of the mineral leasing laws that he deems appropriate: *Provided,* That any such lease shall not be inconsistent, as determined by the Secretary of the Interior, with the other uses of said lands by the State of Utah, its grantees, lessees, or permittees. (80 Stat. 192)

Sec. 4. [Conditions of conveyance.]—As a condition of the conveyance authorized in this Act, and in consideration thereof, the State of Utah shall, (a) upon the express authority of an Act of its legislature, convey to the

United States by quitclaim deed all of its rights, title, and interest in lands upland from the meander line, which lands the State may claim against the United States by reason of said lands having been, or hereafter becoming, submerged by the waters of Great Salt Lake, and (b) pay to the Secretary of the Interior the fair market value, as determined by the Secretary, of the lands (including any minerals) conveyed to it pursuant to section 2 of this Act. The Secretary of the Interior, after consultation with the State of Utah, may accept in payment in behalf of the United States, in lieu of money only, interests in lands, interests in mineral rights, including those beneath the lakebed, the relinquishment of land selection rights, or any combination thereof equal to the fair market value. (80 Stat. 193)

Sec. 5. [State of Utah to elect alternatives or conveyance null and void.]—Within nine months after the date of enactment of this Act the State of Utah shall elect one of the alternatives set out in subsection (a) or subsection (b) of this section, and a failure so to elect shall render null and void any conveyance pursuant to this Act. The State—

(a) may request the Secretary of the Interior to determine the fair market value of the lands as of the date of the completed survey:

(1) In reaching a determination of the fair market value as of that time, the Secretary shall make a comprehensive study of the lands and minerals which are the subject of this Act;

(2) Nothing in this section shall be deemed to limit or prevent the Secretary from giving consideration to all factors he deems pertinent to an equitable resolution of the question of the proper consideration to be paid by the State of Utah to the United States for such lands;

(3) The Secretary shall transmit his value determination to the Governor of the State of Utah not later than two years after he receives the request referred to above in this subsection. If payment by the State of Utah of the fair market value is not made within two years after the receipt of the Secretary's value determination, the conveyance authorized by section 2 of this Act shall be null and void; or

(b) may maintain an action in the Supreme Court of the United States to secure a judicial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah pursuant to section 2 of this Act. Consent to join the United States as a defendant to such an action is hereby given. Within two years from the completion of the action, the Secretary of the Interior shall determine the fair market value, as of the date of the decision of the court, of such lands (including minerals) conveyed to the State pursuant to section 2 of this Act as may be found by the court to have been the property of the United States prior to the conveyance. If payment by the State of Utah of the fair market value is not made within two years after the receipt of the Secretary's value determination, the conveyance authorized by section 2 of this Act shall be null and void. (80 Stat. 193)

Sec. 6. [Issuance of licenses, permits and leases.]—Pending resolution of the amount and manner of compensation to be paid by the State of Utah to the United States as provided herein, the State of Utah is authorized

after making the agreement required by this section to issue permits, licenses, and leases covering such of these lands as the State deems necessary or appropriate to further the development of the water and mineral resources of the Great Salt Lake, or for other purposes. The State of Utah, by or pursuant to an express act of its legislature, shall agree to assume the obligation to administer the lands, for the purposes set forth above, in the manner of a trustee and any proceeds derived by the State of Utah therefrom shall be paid to the United States, until compensation for the full value of said lands as herein provided is made. Such proceeds paid to the United States shall be to the credit of the State of Utah as part of the compensation for which provision is made herein. If the question of the title to the United States is litigated as authorized by section 5(b) of this Act, and it is determined that the United States has no right, title, or interest in lands from which revenues have been derived and paid to the United States pursuant to this section, the revenues paid to the United States shall be returned to the State of Utah without interest.

In the event the conveyance authorized by section 2 of this Act becomes null and void, then any valid permits, licenses, and leases issued by the State under authority of this section, shall be deemed permits, licenses, and leases of the United States and shall be administered by the Secretary in accordance with the terms and provisions thereof, excepting for land rental rates which rates shall be subject to change based upon fair rental value as determined by the Secretary of the Interior and shall be subject to review and appropriate modification not less frequently than every five years by the Secretary of the Interior in accordance with rules and regulations of the Department of the Interior. (80 Stat. 193; Act of August 23, 1966, 80 Stat. 349)

EXPLANATORY NOTE

Legislative History. S. 265, Public Law 89-441 in the 89th Congress. Companion bill H.R. 1791 in the House. S. 265 reported in Senate from Interior and Insular Affairs; S. Rept. No. 1006. Passed Senate May 19, 1966. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 1327. Conference report H.R. Rept. No. 1540. Passed House May 19, 1966.

NATIONAL HISTORIC PRESERVATION ACT OF 1966

[Extracts from] An act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes. (Act of October 15, 1966, Public Law 89-665, 80 Stat. 915)

Editor's Note. This Act was inadvertently omitted from Volume III. The extracts set forth below appear as amended through 1982.

Sec. 1. [Title and Findings.]—(a) This Act may be cited as the "National Historic Preservation Act".

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (80 Stat. 915; Act of December 12, 1980, 94 Stat. 2987; 16 U.S.C. § 470a)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 95-515, 94 Stat. 2987) amended section 1 by: adding subsection (a); designating the existing provision as subsection (b); redesignating paragraphs (a) through (d) of subsection (b) as (1), (2), (5), and (7),

respectively; and by substituting the word "heritage" for the word "past" in paragraph (1) of subsection (b). The 1980 Act does not appear herein.

Sec. 2. [Policy of the Federal Government to preserve historic resources.]—It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (Added by Act of December 12, 1980, 94 Stat. 2988; 16 U.S.C. § 470-1)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended the 1966 Act by adding section 2, which sets out the policy of the Federal government toward historic resources. The 1980 Act does not appear herein.

TITLE I

Sec. 101. (a) [Secretary authorized to expand and maintain National Register—Designation of properties as historic landmarks; properties deemed included—Criteria—Nomination of properties by States, local governments or individuals—Regulations.]—(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 shall be deemed to be

included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

(2) The Secretary in consultation with national historical and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), and any property nominated under this paragraph or under section 110 (a)(2) shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in

a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determination shall be made within ninety days from the date of the nomination unless the nomination is appealed under paragraph (5).

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

(7) The Secretary shall promulgate, or revise, regulations—

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 103 (c).

(b) [Regulations for State Historic Preservation Programs—Periodic evaluations and fiscal audits of State programs—Administration—Contracts and cooperative agreements with nonprofit or educational institutions—Treatment of State programs as approved programs.]—(1) The

Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this Act. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1) of this section, unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education, and training and technical assistance relating to the Federal and State Historic Preservation Programs; and

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section.

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of—

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after December 12, 1980.

(c) [Certification of local governments by State Historic Preservation Officer—Transfer of portion of grants—Certification by Secretary—Nomination of properties by local governments for inclusion on National Register.]—(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103 (c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and

the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this section. The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 103 (c), and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

(d) [Grants-in-aid programs for States and for the National Trust for Historic Preservation—Direct grant program for properties included on National Register—Grants or loans to Indian tribes and ethnic or minority groups.]—(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.

(2) The Secretary shall administer a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927), for the purposes of carrying out the responsibilities of the National Trust.

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104.

(e) [No grant funds to be used to compensate intervenors.]—No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

(f) [Guidelines for agency-owned historic properties.]—In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110.

(g) [Professional standards.]—Within one year after December 12, 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

(h) Dissemination of information.]—The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students. (80 Stat. 915; Act of July 1, 1973, 87 Stat. 139; Act of October 7, 1976, 90 Stat. 1942; Act of March 12, 1980, 94 Stat. 92; Act of December 12, 1980, 94 Stat. 2988; 16 U.S.C. § 470a)

EXPLANATORY NOTES

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsections (a) and (b) to read as they appear above and added subsections (c) through (h). The amendments to subsections (a) and (b) modified and expanded the responsibilities of the Secretary of the Interior concerning the National Register, National Historic Landmarks, and the World Heritage List, authorized the establishment of State Historic Preservation Programs, and set out guidelines for their operation. The 1980 Act does not appear herein.

Reference in the Text. The Act of June 27, 1960 (Public Law 86-523, 74 Stat. 220) referred to in subsection (a) of the text, is an act for the preservation of historical and archaeological data, including relics and speci-

mens, which might otherwise be lost as a result of the construction of a dam. The 1960 Act appears in Volume III at page 1533.

Reference in the Text. The Archaeological Resources Protection Act of 1979 (Act of October 31, 1979, Public Law 96-95, 93 Stat. 721), also referred to in subsection (a) of the text, appears in Volume IV in chronological order.

Sec. 102. [Requirements for making grants—State cost contributed by non-Federal sources—Grants not taxable income—Waiver of certain requirements—Prohibition against use of value of real property obtained before effective date of Act.]—(a) No grant may be made under this Act—

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 101 (d)(1) and (2) in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year.

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1954.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) *Repealed.*

(d) No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the remaining cost of a project for which a grant is made under this Act. (80 Stat. 916; Act of September 28, 1976, 90 Stat. 1319; Act of December 12, 1980, 94 Stat. 2993; 16 U.S.C. § 470b)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsection (a) to read as it appears above. The amendments deal with the maximum percentage of the cost of carrying out projects and programs under subsections (d) (1) and (2) for which a grant can be made and the State share of such costs. The Act also deleted subsection (c), which authorized the Secretary to waive the requirements of subsection (a) (3) for the purposes of making grants for the preparation of statewide historic preservation plans and surveys and project plans and restricted any grant to not to exceed 70 per centum of the cost of the project, with the total cost of grants made in any fiscal year not to exceed one-half of the funds appropriated for that fiscal year pursuant to section 108. The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1319) amended section 102 by adding subsection (c) and redesignating former subsection (c) as subsection (d). The 1976 Act does not appear herein.

Sec. 103. [Apportionment of grant funds—Assistance from other Federal programs—Notification to State—Transfer of funds to local governments—Guidelines for use of funds.]—(a) No grant may be made by the Secretary for or on account of any survey or project under this Act with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this Act.

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.

The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101 (c) for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds $65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101 (c).

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary

require any State to exceed the 10 per centum minimum distribution to local governments. (80 Stat. 916; Act of September 28, 1976, 90 Stat. 1319; Act of December 12, 1980, 94 Stat. 2993; 16 U.S.C. § 470c)

EXPLANATORY NOTES

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsection (b) to read as it appears above and added subsections (c) and (d). The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended subsection (a) by eliminating a provision that had restricted to 50 per centum the amount a State could receive for a comprehensive statewide historic survey and plan. The 1976 Act does not appear herein.

Sec. 104. [Loan program for preservation of property included on National Register—Requirements—Limitation on amount—Assignability of insurance contracts—Protection of interests of Federal Government—Conveyance of property acquired by foreclosure—Fees—Loans treated as non-Federal funds—Debt obligation not eligible for purchase by Federal Financing Bank.]—(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

(b) A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsections (g) and (i) of this section, as in effect on December 12, 1980, but which has not been appropriated for any purpose.

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under sections 101 to 111; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

(g) (1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out purposes of this Act.

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank. (80 Stat. 917; Act of December 12, 1980, 94 Stat. 2994; 16 U.S.C. § 470d)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 104 by: eliminating from subsection (a) a provision that had prohibited grants to surveys or projects receiving assistance from any other Federal program or activity and adding the provision authorizing the Secretary to establish and maintain a program of insured loans to finance any project for the preservation of a property listed on the National Register; striking from subsection (b) a provision that had authorized the President to issue regulations to assure consistency in coordination of Federal programs and adding to subsection (b) the provision describing loan qualifications; and by adding subsections (c) through (k). The 1980 Act does not appear herein.

Sec. 105. [Record keeping required.]—The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. (80 Stat. 917; 16 U.S.C. § 470e)

Sec. 106. [Head of Federal agency shall take account of effect of Federal undertakings on properties listed in National Register—Opportunity to comment given to Advisory Council on Historic Preservation.]—The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 201 to 214 a reasonable opportunity to comment with regard to such undertaking. (80 Stat. 917; Act of September 28, 1976, 90 Stat. 1320; 16 U.S.C. § 470f)

EXPLANATORY NOTE

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 106 by inserting "or eligible for inclusion in" following "included in". The 1976 Act does not appear herein.

NOTE OF OPINION

1. Central Valley Project, San Felipe Division

The Water and Power Resources Service is not responsible for insuring that the proposed Cross Valley Pipeline and Almaden Valley Pipeline Unit II comply with Section 106 of the National Historic Preservation Act as they are neither a Federal or Federally-assisted undertaking nor a reasonably foreseeable consequence of a Federal action in that: 1) the pipelines were not contemplated as part of the Central Valley Project, San Felipe Division, and if constructed will not require Federal permission nor be a part of the project; and 2) the pipelines will be located entirely on locally-owned land and constructed and controlled entirely by the local Santa Clara Valley Water District. The sole connection with the Central Valley Project is at the delivery point, the Coyote Pump Station. Memorandum of Associate Solicitor Little to Commissioner, Water and Power Resources Service, October 15, 1980.

Sec. 107. [Exemptions.]—Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds. (80 Stat. 917; 16 U.S.C. § 470g)

* * * * *

Sec. 110. [Duties of Federal agencies for historic properties federally owned or controlled—Records for historic properties to be altered or destroyed—Agency preservation officer—Coordination with agency programs and projects—Review of plans of transferees of surplus federally owned historic properties—Minimization of harm to National Historical Landmarks—Costs of preservation activities—Annual preservation awards program—Environmental impact statements—Waiver of requirements for major natural disaster or imminent threat to national security.]—(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101a(f), any preservation, as may be necessary to carry out this section.

(2) With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101a(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101a(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this subchapter. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101a(g).

(d) Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969

and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security. (Added by Act of December 12, 1980, 94 Stat. 2996; 16 U.S.C. § 470h-2)

EXPLANATORY NOTE

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970, Public Law 91-190, 83 Stat. 852, 42 U.S.C. § 4321 et seq.), referred to in subsection (i) of the text, appears in Volume IV in chronological order.

Sec. 111. [Lease or exchange of historic property—Proceeds of lease—Contracts for management of historic property.]—(a) Notwithstanding any other provision of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

(b) The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property. (Added by Act of December 12, 1980, 94 Stat. 2996; 16 U.S.C. § 470h-3)

TITLE II

Sec. 201. [Advisory Council on Historic Preservation—Membership—Term of office—Vacancies—Quorum.]—(a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation (hereinafter referred to as the "Council") which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines; and

(10) three at-large members from the general public, appointed by the President.

(b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) A vacancy in the Council shall not affect its powers, but shall be filled, not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980, shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980.

(e) The President shall designate a Vice Chairman, from the members appointed under paragraph (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) Nine members of the Council shall constitute a quorum. (80 Stat. 917; Act of May 9, 1970, 84 Stat. 204; Act of July 1, 1973, 87 Stat. 139; Act

of September 28, 1976, 90 Stat. 1320; Act of December 12, 1980, 94 Stat. 2998; 16 U.S.C. § 470i)

EXPLANATORY NOTES

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsections (a) through (f) of section 201 to read as they appear above. The amendments dealt with the number of members on the Council, their terms of office and the number of terms they can serve, and filling of vacancies on and new appointments to the Council. The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 201 by increasing the membership of the Council from 20 to 29 members, enlarging Presidential authority to include designation of a Vice Chairman, and striking former subsection (g), which had provided that the Council should remain in existence until December 31, 1985. The 1976 Act does not appear herein.

Sec. 202. [Functions of Council—Annual report.]—(a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this subchapter; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal

agencies, State and local governments, and the private sector in carrying out the purposes of this Act. (80 Stat. 918; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470j)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 202 by adding paragraphs (6) and (7) to subsection (a) and inserting in subsection (b) the provision requiring the Council to include in its report an assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the Federal, State, local and private historic preservation programs. The 1980 Act does not appear herein.

Sec. 203. [Cooperation between Council and Federal agencies.]—The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of sections 201 to 214; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds. (80 Stat. 918; 16 U.S.C. § 470k)

Sec. 204. [Compensation of Council members.]—The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive $100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council. (80 Stat. 918; Act of May 9, 1970, 84 Stat. 204; Act of September 28, 1976, 90 Stat. 1321; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470*l*)

Sec. 205. [Executive director—General Counsel—Appointment and compensation of officers and employees—Services to be provided by Department of Interior—Funds, personnel, facilities, services provided by members.]—(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5, United States Code: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5, United States Code.

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided,* That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council: *And provided further,* That the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (2) through (4) of section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act. (80 Stat. 919; Act of May 9, 1970, 84 Stat. 204; Act of September 28, 1976, 90 Stat. 1321; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470m)

EXPLANATORY NOTES

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 205 by: inserting in subsection (b) ", including enforcement of agreements with Federal agencies to which the Council is a party" after "appropriate"; substituting in subsection (g) "paragraphs (2) through (4)" for "paragraphs (1) through (16)"; and inserting in subsection (g) the provision authorizing the Council to accept donations of money and authorizing the Executive Director, in his discretion, to accept, hold, use, expend, and administer such moneys. The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 205 with respect to appointment and duties of the Executive Director, furnishing of facilities and financial and administrative services, appointment and compensation of the General Counsel and other personnel, and procurement of temporary and intermittent services. The 1976 Act does not appear herein.

Reference in the Text. The sections of title 5 of the United States Code referred to in subsections (c), (d), and (e) of the text deal generally with compensation of Federal employees, Civil Service laws, and employment of experts and consultants, respectively. Sections 1513(d) and 1514 of title 31 of the Code, referred to in subsection (f) of the text, deal with administrative control and apportionment of funds. The two sections of title 31 appear in the Appendix in Supplement I.

* * * * *

Sec. 211. [Rules and regulations—Participation by local governments.]—The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 which affect such local governments. (Added by Act of September 28, 1976, 90 Stat. 1322; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470s)

* * * * *

Sec. 213. [Report by Secretary to Council.]—To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects. (Added by Act of December 12, 1980, 94 Stat. 3000; 16 U.S.C. § 470u)

Sec. 214. [Exemption for Federal programs or undertakings.]—The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking

or program and the likelihood of impairment of historic properties. (Added by Act of December 12, 1980, 94 Stat. 3000; 16 U.S.C. § 470v)

* * * * *

TITLE III

Sec. 301. **[Definitions.]**—As used in this Act, the term—

(1) "Agency" means agency as such term is defined in section 551 of title 5, United States Code, except that in the case of any Federal program exempted under section 214, the agency administering such program shall not be treated as an agency with respect to such program.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act.

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 101.

(7) "Undertaking" means any action as described in section 106.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities.

(9) "Cultural park" means a definable urban area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an urban area of one or more neighborhoods and which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior except where otherwise specified.

(12) "State historic preservation review board" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B)—

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, and architecture, and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer, and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, archaeology, or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission. (Added by Act of December 12, 1980, 94 Stat. 3001; 16 U.S.C. § 470w)

EXPLANATORY NOTE

Reference in the Text. The Alaska Native Claims Settlement Act (Act of December 18, 1971, Public Law 92-203, 85 Stat. 688, 43 U.S.C. § 1601 et seq.), referred to in subsection (4) of the text, does not appear herein.

Sec. 302. [Authorization for expenditure of appropriated funds.]—Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise. (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-1)

Sec. 303. [Donations and bequests of money, personal property, and less than fee interests in historic properties.]—(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such in-

terests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose. (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-2)

Sec. 304. [Disclosure of information concerning the location or character of historic resources.]—The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located. (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-3)

Sec. 305. [Attorneys' fees to prevailing party in civil actions.]—In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable. (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-4)

* * * * *

Sec. 307. [Regulations—Copy to Congress before publication in Federal Register—Effective date of final regulations—Effective date in case of emergency—Resolution of disapproval by Congress—Effect of Congressional inaction or rejection of disapproval resolution.]—(a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) of this section if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c) Except as provided in subsection (b) of this section, the regulation shall not become effective if, within ninety calendar days of continuous

session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of , which regulation was transmitted to Congress on ," the blank spaces therein being appropriately filled.

(d) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(e) For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(f) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation. (Added by Act of December 12, 1980, 94 Stat. 3004; 16 U.S.C. § 470w-6)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions dealing with this Act are included only to the extent deemed relevant to the programs and activities of the Bureau of Reclamation and of the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

Legislative History. S. 3035, Public Law 89-665 in the 89th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 1916. Reported in Senate from Interior and Insular Affairs; S. Rept. No. 1363. Passed House October 10, 1966. Passed Senate October 11, 1966.

METROPOLITAN WATER DISTRICT DESALTING PLANT

An act to provide for the participation of the Department of the Interior in the construction and operation of a large prototype desalting plant, and for other purposes (Act of May 19, 1967, Public Law 90-18, 81 Stat. 16)

[Sec. 1. Desalting plant authorized.]—The Secretary of the Interior is authorized to participate in the development of technology for a large-scale desalting plant by providing financial, technical, or other assistance to the Metropolitan Water District of Southern California for the design, development, construction, and operation of a water treatment and desalting plant to be constructed as a part of a dual-purpose electrical power generation and desalting project in the southern California area. (81 Stat. 16)

Sec. 2. [Evaluation of benefits.]—Before providing any assistance as authorized by this Act, the Secretary shall first determine that the value of the anticipated technical knowledge and experience in desalting to be derived from his participation in the construction and operation of this facility will be not less than the amount of such assistance. (81 Stat. 16)

Sec. 3. [Contract with Metropolitan Water District—Terms and conditions.]—In order to provide the assistance authorized by this Act, the Secretary may, without regard to the provisions of Revised Statutes 3648, enter into a contract with the Metropolitan Water District of Southern California containing such terms and conditions as he deems appropriate and covering such periods of time as he may consider necessary but under which the liability of the United States shall be contingent upon appropriations being available therefor. No such contract, however, shall be executed by the Secretary until 45 calendar days after it has been transmitted to the President of the Senate and the Speaker of the House of Representatives, which 45 days shall not include days on which either the Senate or the House of Representatives is not in session because of an adjournment for more than three days to a day certain or an adjournment sine die. The contract shall provide that any financial assistance by the United States under this Act toward the construction of the Bolsa Island or the facilities thereon shall be contingent upon the parties concerned obtaining, prior to the start of construction of the Bolsa Island, a construction permit from the United States Atomic Energy Commission for the construction of the nuclear reactors on the said island. The contract shall also provide that the United States, its officers and employees shall have a permanent right to access to said island and the desalting project located thereon for all official purposes. (81 Stat. 16)

Explanatory Note

Reference in the Text. Section 3648 of the Revised Statutes, referred to in the text, prohibits the advance of public funds for any purpose unless specifically authorized. The section appears in Volume III at page 1962 as formerly codified at 31 U.S.C. § 529. It is now incorporated in revised title 31 at § 3324, and appears as such in the Appendix in Supplement I.

Sec. 4. [Report to Congress.]—The Secretary of the Interior shall report to the President of the Senate and the Speaker of the House of Representatives on or before March 1 of each year on his operations under this Act and on the results obtained by the United States from participation in the desalting and electrical power generation project pursuant to this Act. (81 Stat. 17)

Sec. 5. [Appropriation authorization.]—To carry out the purposes of this Act, there are authorized to be appropriated not to exceed $57,200,000, which shall remain available until expended. (81 Stat. 17)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 270, Public Law 90-18 in the 90th Congress. Reported in Senate from Interior and Insular Affairs February 3, 1967; S. Rept. No. 49. Passed Senate February 6, 1967. Passed House, amended, April 20, 1967. Senate agrees to House amendment May 8, 1967. Companion bill H.R. 207 reported in House from Interior and Insular Affairs April 7, 1967; H.R. Rept. No. 180.

GARRISON DAM, LAKE SAKAKAWEA

An act authorizing the change in name of certain water resource projects under jurisdiction of the Department of the Army. (Act of July 4, 1967, Public Law 90-46, 81 Stat. 111)

[Sec. 1. Garrison Dam and Lake Sakakawea named.]—The names of the following locks and dams, reservoirs, and other navigation and flood control facilities under jurisdiction of the Department of the Army, are hereby changed as follows:

* * * * *

the dam, commonly referred to as Garrison Dam, located on the Missouri River in North Dakota, is hereby officially designated as "Garrison Dam";

the reservoir, known as Garrison Reservoir or Garrison Lake, located above Garrison Dam to "Lake Sakakawea";

* * * * *

Sec. 2. [Records to be conformed.]—Any law, regulation, map, document, or record of the United States in which any such lock and dam, reservoir, or other navigation and flood control facility is referred to by its former name shall be held to refer to such lock and dam, reservoir, or other navigation and flood control facility by the name designated herein. (81 Stat. 112)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1649, Public Law 90-46 in the 90th Congress. Reported in Senate from Public Works April 27, 1967; S. Rept. No. 194. Passed Senate May 2, 1967. Reported in House from Public Works May 25, 1967; H.R. Rept. No. 303. Passed House, amended, June 5, 1967. Senate agrees to House amendments June 16, 1967.

AMEND SACRAMENTO VALLEY CANALS ACT

An act to amend the Act of September 26, 1950, authorizing the Sacramento Valley irrigation canals, Central Valley project, California, in order to increase the capacity of certain project features for future irrigation of additional lands. (Act of August 19, 1967, Public Law 90-65, 81 Stat. 167)

[Sec. 1. Extra capacity in Tehama-Colusa Canal authorized.]—Section 2 of the Act entitled "An Act to authorize Sacramento Valley irrigation canals, Central Valley project, California," approved September 26, 1950 (64 Stat. 1036) is amended by adding to the first paragraph of that section the following: "Notwithstanding the provisions of section 5 of this Act, the Secretary of the Interior is authorized to provide sufficient extra capacity and elevation in the Tehama-Colusa Canal to enable future water service to Yolo, Solano, Lake, and Napa Counties for irrigation and other purposes, and to treat the cost of providing such extra capacity as a deferred obligation. The deferred obligation is to be paid under arrangements to be made at such time as the works to serve the additional areas may be authorized as an extension of the Central Valley project. In the event such works are not authorized, the deferred obligation is to be paid from other revenues of the Central Valley project. (81 Stat. 167)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Purpose of the Act. The report of the Senate Committee on Interior and Insular Affairs states that the purpose of the Act is to "authorize an enlargement and realinement [sic] of the last fifty miles of the authorized Tehama-Colusa Canal as a part of the potential West Sacramento Canal unit. This additional capacity would be needed and used only after the West Sacramento Canal unit is authorized and constructed. The authorization and construction of the additional canal capacity at this time, however, is in the interest of long-range economy, saving approximately $5.7 million in construction costs at $65,000 per year in operating expenses over the life of the future West Sacramento Canal unit." S. Rept. No. 200, 90th Cong., 1st Sess. 1 (1967).

Editor's Note, Annotations. Annotations of opinions are found in Supplement I under "September 26, 1950—Sacramento Valley Canals."

Legislative History. H.R. 743, Public Law 90-65 in the 90th Congress. Reported in House from Interior and Insular Affairs March 20, 1967; H.R. Rept. No. 133. Passed House April 13, 1967. Passed Senate August 9, 1967. Companion bill S. 1098 reported in Senate from Interior and Insular Affairs April 18, 1967; S. Rept. No. 200.

SAN FELIPE DIVISION, CENTRAL VALLEY PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the San Felipe division, Central Valley project, California, and for other purposes. (Act of August 27, 1967, Public Law 90-72, 81 Stat. 173)

[Sec. 1. San Felipe division, Central Valley project, authorized.]—For the purposes of providing irrigation and municipal and industrial water supplies, conserving and developing fish and wildlife resources, enhancing outdoor recreation opportunities and other related purposes, the Secretary of the Interior acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory therof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to, and an integral part of, the Central Valley project, California, the San Felipe division. The principal works of the division shall consist of the Pacheco tunnel, pumping plants, power transmission facilities, canals, pipelines, regulating reservoirs, and distribution facilities. No facilities shall be constructed for electric transmission and distribution service which the Secretary determines, on the basis of an offer of a firm fifty-year contract from a local public or private agency, can through such a contract be obtained at less cost to the Federal Government than by construction and operation of Government facilities. (81 Stat. 173)

NOTES OF OPINIONS

Environmental impact statements 1
Historic preservation 2
Project modifications 3

1. Environmental impact statements

The "Final Environmental Impact Statement" for the San Felipe Division of the Central Valley Project, which consisted of 475 pages and had been preceded by a "Draft Environmental Impact Statement" of 175 pages, satisfied the requirements of section 102 of the National Environmental Policy Act in that it adequately enabled decision makers to consider the project with full awareness of the environmental consequences, provided the public with information, and encouraged public participation in developing that information. *Environmental Defense Fund, Inc. v. Stamm*, 430 F. Supp. 664 (N.D. Cal. 1977).

2. Historic preservation

The Water and Power Resources Service is not responsible for insuring that the proposed Cross Valley Pipeline and Almaden Valley Pipeline Unit II comply with Section 106 of the National Historic Preservation Act as they are neither a Federal or Federally-assisted undertaking nor a reasonably foreseeable consequence of a Federal action in that: 1) the pipelines were not contemplated as part of the Central Valley Project, San Felipe Division, and if constructed will not require Federal permission nor be a part of the project; and 2) the pipelines will be located entirely on locally-owned land and constructed and controlled entirely by the local Santa Clara Valley Water District. The sole connection with the Central Valley Project is at the delivery point, the Coyote Pump Station. Memorandum of Associate Solicitor Little to Commissioner, Water and Power Resources Service, October 15, 1980.

3. Project modifications

Major modifications of the engineering features of the San Felipe Division such as reducing the length and capacity of the Pacheco Tunnel, substituting conduits and tunnels for originally contemplated canals, and deferring project service to the Watsonville subarea, necessitated by cost constraints, changed conditions and revised projections of water demand and availability, are within the scope of Congressional construction authorization even though they deviate from the plans set

forth in the feasibility report. The authorizing act clearly suggests that Congress intended to give the Secretary substantial discretion to modify project features to fit changing needs so long as the basic facilities Congress described were built to carry out the project purposes. However, as the authorizing Act sets a specific ceiling on appropriations, further appropriations must be authorized by Congress before money in excess of this funding may be spent. Solicitor Krulitz Opinion, 85 I.D. 337 (1978).

Sec. 2. [Fish and wildlife development—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the San Felipe division shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). (81 Stat. 174)

Sec. 3. [Contract for delivery of water.]—The Secretary may contract with the State of California for the delivery through facilities of the State water project to the San Luis forebay reservoir of all or any part of the water of the Central Valley project assigned to the San Felipe division. (81 Stat. 174)

Sec. 4. [Design of work—Cooperation with local interests.]—In locating and designing the works and facilities authorized for construction by this Act, and in acquiring or withdrawing any lands as authorized by this Act, the Secretary shall give due consideration to reports prepared by the State of California on the California water plan, and shall consult with local interests who may be affected by the construction and operation of said works and facilities or by the acquisition or withdrawal of lands, through public hearings or in such manner as in his discretion may be found best suited to a maximum expression of the views of such local interests. (81 Stat. 174)

Sec. 5. [Excess land limitation not applicable.]—In view of the special circumstances of the San Felipe division, neither the provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 636, 649) nor any other similar provision of the Federal reclamation laws shall be applicable in the south and north Santa Clara subareas so long as the water utilized on project lands is acquired by pumping from the underground reservoir. (81 Stat. 174)

EXPLANATORY NOTES

Reference in the Text. The third sentence of section 46 of the Act of May 25, 1926, referred to in the text, provides for the appraisal and sale, by means of a recordable contract, of lands in private ownership in excess of one hundred sixty acres. The sentence appears in Volume I at page 377.

Excess Land Limitation. The "special circumstances" mentioned in the text refer to the method of water delivery and the small amount of excess acreage in the south and north Santa Clara subareas. Project water will be delivered into dry creek beds to recharge the underlying underground aquifers, and water users will pump water from the aquifers as needed. Of the over 100,000 acres of irrigable land in the subareas, about 8,400 acres are in excess holdings. The Senate Committee report states: "There are complexities in applying the excess land laws to an area where the project water supply is made available for underground recharge pumping rather than through surface deliveries. Where users are supplied by pumping from a common underground supply, water cannot be withheld from anyone who chooses to pump. To be effective, contracts committing the excess landowners to dispose of their excess lands

would have to be obtained before delivery of project water to the underground, but such an advance requirement would enable a single 'holdout', by refusing to contract, to deprive the entire area of the benefit of the vitally needed new water supplies.

"On the other hand, severe and undesirable pressures may also be generated, for the entire community may try to compel an unwilling excess landowner who doesn't wish to participate in the project to sign up in order that the community as a whole may receive the benefits of the project.

"When the excess acreage is small, as in this case, and administration of existing law is impracticable, it is the committee's view that neither the community nor the few excess landowners should be forced to such procrustean choices. Consequently, in these special circumstances, the committee has concluded that the excess land provisions of the reclamation law should not apply." S. Rept. No. 282, 90th Cong., 1st Sess. 5 (1967).

Sec. 6. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (81 Stat. 174)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 7. [Appropriation Authorization.]—There are hereby authorized to be appropriated for construction of the new works involved in the San Felipe division $92,380,000 (October 1966 prices), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes and, in addition thereto, such sums as may be required to operate and maintain said division. (81 Stat. 174)

EXPLANATORY NOTES

Codification Omitted. This Act originally was codified at 43 U.S.C. §§ 616fff-1 to 616fff-7 but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. S. 1111, Public Law 90-72 in the 90th Congress. Reported in Senate from Interior and Insular Affairs May 18, 1967; S. Rept. No. 282. Passed Senate July 10, 1967. Passed House August 14, 1967. Companion bill H.R. 43 reported in House from Interior and Insular Affairs August 1, 1967; H.R. Rept. No. 523.

INCREASED AUTHORIZATION, MISSOURI RIVER BASIN PROJECT

An act to increase the appropriation authorization for continuing work in the Missouri River Basin by the Secretary of the Interior. (Act of September 22, 1967, Public Law 90-89, 81 Stat. 228)

[Sec. 1.]—The Act of July 19, 1966 (80 Stat 322), is hereby amended by changing "$60,000,000" to "$68,000,000". (81 Stat. 228)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of July 19, 1966 (80 Stat. 322), referred to in the text, authorized $60,000,000 to be appropriated for continuing the works in the Missouri River Basin by the Secretary of the Interior. The 1966 Act appears in Volume III at page 1874.

Legislative History. S. 1601, Public Law 90-89 in the 90th Congress. Reported in Senate from Interior and Insular Affairs May 1, 1967; S. Rept. No. 204. Passed Senate May 4, 1967. Passed House, amended, September 11, 1967. Senate agrees to House amendment September 12, 1967. Companion bill H.R. 8775 reported in House from Interior and Insular Affairs August 28, 1967; H.R. Rept. No. 617.

NEBRASKA MID-STATE DIVISION, MISSOURI RIVER BASIN PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the Nebraska Mid-State division, Missouri River Basin project, and for other purposes. (Act of November 14, 1967, Public Law 90-136, 81 Stat. 444)

[Sec. 1. Nebraska Mid-State division, Missouri River Basin project, authorized.]—The Secretary of the Interior is hereby authorized to construct, operate, and maintain in accordance with the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto) the Nebraska Mid-State division, Missouri River Basin project, Nebraska, for the principal purposes of furnishing a surface irrigation water supply for approximately one hundred and forty thousand acres of land, aiding in the replenishment of the ground water supply of the area for domestic and agricultural use, controlling floods, conserving and developing fish and wildlife, enhancing recreation opportunities, and producing hydroelectric power. The principal works of the project shall consist of a diversion dam on the Platte River, a main supply canal, an interconnected reservoir system, hydroelectric power facilities, wasteways, pumps, drains, canals, laterals, distribution facilities, and related works. (81 Stat. 444)

Sec. 2. [Integration with other works.]—The Nebraska Mid-State division shall be integrated, physically and financially, with the other Federal works in the Missouri River Basin constructed or authorized to be constructed under the comprehensive plans approved by section 9 of the Act of December 22, 1944 (58 Stat. 891), as amended and supplemented, and shall be a division of the Missouri River Basin project therein approved and authorized. (81 Stat. 444)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in the text, authorized the comprehensive development of the Missouri River Basin. Extracts from the 1944 Act, including section 9 thereof, appear in Volume II at page 796.

Sec. 3. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the Nebraska Mid-State division shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (81 Stat. 444)

Sec. 4. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act

shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (81 Stat. 444)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 5. [Recreation, fish and wildlife benefits.]—The provision of land, facilities, and project modifications which furnish outdoor recreation and fish and wildlife enhancement benefits in connection with the Nebraska Mid-State division shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). (81 Stat. 445)

Sec. 6. [Appropriation authorization.]—There is authorized to be appropriated for construction of the Nebraska Mid-State division as authorized in this Act, the sum of $106,135,000 (January 1967 price levels) plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the division. (81 Stat. 445)

Sec. 7. [Condition precedent to construction.]—In order to assure repayment of the irrigation portion of this project, no funds shall be appropriated for construction nor shall any construction be started until firm and binding contracts have been signed by the owners of the full one hundred and forty thousand acres of land to be irrigated from waters furnished by the Mid-State reclamation project, said contracts to be certified by the Mid-State Board of Directors. (81 Stat. 445)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Repayment Contracts. The provision of section 7 requiring repayment contracts for the entire one hundred and forty thousand acres prior to construction "runs against actual construction costs and does restrict the authorization to appropriate funds for advanced planning activities." S. Rept. No. 695, 90th Cong., 1st Sess. 1 (1967).

Legislative History. H.R. 845, Public Law 90-136 in the 90th Congress. Reported in House from Interior and Insular Affairs, July 18, 1967; H.R. Rept. No. 489. Passed House August 14, 1967. Reported in Senate from Interior and Insular Affairs October 31, 1967; S. Rept. No. 695. Passed Senate November 1, 1967.

CONVEYANCE OF MINERAL RIGHTS TO CITY OF NEEDLES

An act to amend Public Law 87-752 (76 Stat. 749) to eliminate the requirement of a reservation of certain mineral rights to the United States. (Act of November 15, 1967, Public Law 90-138, 81 Stat. 463)

[Sec. 1. Reservation of mineral rights deleted.]—The first section of the Act entitled "An Act to direct the Secretary of the Interior to convey certain public lands in the State of California to the city of Needles", approved October 5, 1962 (Public Law 87-752; 76 Stat. 749), is amended by striking out "with a reservation to the United States of the coal, phosphate, sodium, potassium, oil, gas, oil shale, native asphalt, solid and semisolid bitumen and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same under applicable provisions of law." (81 Stat. 463)

Sec. 2. [Conveyance authorized.]—The Secretary of the Interior is authorized to convey to the city of Needles, California, or its successor in interest all mineral rights reserved to the United States in any conveyance made to said city pursuant to the Act of October 5, 1962 (Public Law 87-752; 76 Stat, 749), upon payment by the grantee of the fair market value of the interest conveyed, as determined by the Secretary of the Interior, plus the administrative costs of such conveyance. (81 Stat. 464)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of October 5, 1962 (76 Stat. 749), referred to in the text, authorized the conveyance of certain public lands, subject to a reservation of mineral interests to the United States, to the city of Needles, California. The 1962 Act appears in Volume III at page 1693.

Purpose of the Act. The reservation of mineral interests to the United States in the 1962 Act cast a cloud on title and, in effect, defeated the purpose of that Act. Removal of the cloud by this Act allows the City to utilize the land for municipal development.

Legislative History. H.R. 5091, Public Law 90-138 in the 90th Congress. Reported in House from Interior and Insular Affairs August 28, 1967; H.R. Rept. No. 616. Passed House September 11, 1967. Reported in Senate from Interior and Insular Affairs October 31, 1967; S. Rept. No. 692. Passed Senate November 2, 1967.

FT. PECK INDIAN RESERVATION, CANCELLATION OF CONSTRUCTION COSTS

An act to cancel certain construction costs and irrigation assessments chargeable against lands of the Ft. Peck Indian Reservation, Montana. (Act of November 16, 1967, Public Law 90-143, 81 Stat. 465).

[Sec. 1. Secretarial order canceling O&M charges and construction costs approved.]—In accordance with provisions of the Act of June 22, 1936 (49 Stat. 1803; 25 U.S.C. 389-389e), the order of the Secretary of the Interior canceling delinquent irrigation operation and maintenance charges in the amount of $461.40 and any accrued interest thereon for certain lands adjacent to but outside the boundary of the Fort Peck Indian irrigation project, Montana, and reimbursable irrigation construction costs in the amount of $206,902.21 against lands within the Fort Peck Indian irrigation project, Montana, as listed and described in schedules referred to in such order, is hereby approved.

Sec. 2. [Frazier-Wolf Point Unit—Unassessed construction costs cancelled.]—Unassessed construction costs of $118,266.64 allocable against both the Indian- and non-Indian-owned lands in the Frazier-Wolf Point unit of the Fort Peck Indian irrigation project, Montana, are hereby canceled. (81 Stat. 465)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of June 22, 1936, referred to in section 1 of the text, authorizes the Secretary to adjust, defer, or cancel irrigation charges owed by owners of non-Indian lands under Indian irrigation projects and projects where the United States has purchased water rights for Indians and where the Secretary determines that such landowners are unable to make payment because of lack of fertility of the soil, inadequate water supply, defective irrigation works, or any other causes. Other statutory provisions dealing with the Secretary's authority under the Act of June 22, 1936 have been enacted in connection with the following projects: Flathead Indian Irrigation Project (Act of July 6, 1947, 61 Stat. 494); Klamath Indian Irrigation Project (Act of August 20, 1964, 78 Stat. 554); Oroville-Tonasket Irrigation District (Act of December 24, 1942, 56 Stat. 1082); Uintah Indian Irrigation Project (Act of September 18, 1970, 84 Stat. 843, 844; Act of May 28, 1941, 55 Stat. 209); Wapato Indian Irrigation Project (Act of October 28, 1963, 77 Stat. 278; Act of September 16, 1959, 73 Stat. 564; Act of December 24, 1942, 56 Stat. 1081); Wind River Indian Irrigation Project (Act of September 6, 1963, 77 Stat. 151; Act of July 2, 1962, 76 Stat. 128).

Legislative History. S. 1391, Public Law 90-143 in the 90th Congress. Reported in Senate from Interior and Insular Affairs; S. Rept. No. 691. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 748. Passed Senate November 1, 1967. Passed House November 6, 1967.

PUBLIC WORKS AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1968

[Extracts from] An act making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, Interstate Commission on the Potomac River Basin, the Tennessee Valley Authority, and the Water Resources Council, for the fiscal year ending June 30, 1968, and for other purposes. (Act of November 20, 1967, Public Law 90-147, 81 Stat. 471)

* * * * *

TITLE II—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Wellton-Mohawk Division flood control costs.]—*Provided further,* That the costs allocated to flood control on the Wellton-Mohawk Division, Gila Project, Arizona, shall be nonreimbursable and the subject repayment contracts shall be amended accordingly: (81 Stat. 475)

[Concrete pipe in South Gila Unit.]—*Provided further,* That not to exceed $1,000,000 of this appropriation shall be available for replacement of cast-in-place concrete pipe in the South Gila Unit, Yuma Mesa Division, Gila Project, Arizona, which shall be nonreimbursable. (81 Stat. 475)

EXPLANATORY NOTE

Provision Repeated. The proviso relating to concrete pipe in the South Gila Unit was deleted from the annual appropriation act for 1969 (Act of August 12, 1968, 82 Stat. 709) but a similar proviso was contained in the annual appropriation acts for 1970 (Act of December 11, 1969, 83 Stat. 330) and for 1971 (Act of October 7, 1970, 84 Stat. 896).

* * * * *

[Short title.]—This Act may be cited as the "Public Works and Atomic Energy Commission Appropriation Act, 1968". (81 Stat. 484)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 11641, Public Law 90-147 in the 90th Congress. H.R. Rept. No. 505. S. Rept. No. 574. H.R. Rept. No. 820 (conference report).

RELIEF OF NAVARRO

An act for the relief of Eloy C. Navarro. (Act of December 29, 1967, Private Law 90-195, 81 Stat. 1047)

[Filing of claim authorized—Time limit.]—The claim of Eloy C. Navarro, of Albuquerque, New Mexico, for the loss of personal hand tools on or about April 29, 1964, shall be held and considered to be a timely claim under the Military Personnel and Civilian Employees Claims Act of 1964, as amended (Public Law 88-558, 78 Stat. 767, as amended) if such a claim is filed within one year of the effective date of this Act with the Secretary of the Interior, and the Secretary of the Interior is authorized to consider, settle and, if found meritorious, to pay that claim in accordance with the provisions of the Military Personnel and Civilian Employees Claims Act of 1964. (81 Stat. 1047)

EXPLANATORY NOTES

Background. Mr. Navarro's hand tools were removed from a locked shop building on the Middle Rio Grande project on the night of April 29, 1964. The tools were evidently stolen, but Navarro's claim under the Federal Tort Claims Act was rejected as being over the existing claim limit of $2,500. This Act remedies the situation.

Legislative History. S. 294, Private Law 90-195 in the 90th Congress. Reported in Senate from Judiciary August 17, 1967; S. Rept. No. 520. Passed Senate August 18, 1967. Reported in House from Judiciary October 26, 1967; H.R. Rept. No. 836. Passed House, amended, December 5, 1967. Senate agrees to House amendment December 13, 1967.

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments, and for other purposes. (Act of February 13, 1968, Public Law 90-254, 82 Stat. 5)

[Sec. 1. Feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following proposals:

1. Missouri River Basin project, Garrison division, Garrison diversion unit, Minot extension, in the vicinity of Minot, North Dakota.
2. Mogollon Mesa project, Winslow-Holbrook division in the Little Colorado River Basin in the vicinity of Winslow and Holbrook, Arizona.
3. Mountain Park project in the vicinity of Altus, Oklahoma.
4. Retrop project on the North Fork of the Red River in the vicinity of the W. C. Austin project, Oklahoma.
5. Washita River Basin project, Foss Dam and Reservoir water quality investigation, on the Washita River near Clinton, Oklahoma.
6. Rogue River Basin project, Evans Valley division, on Evans Creek, a tributary of the Rogue River, in southwestern Oregon. (82 Stat. 5)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Authorization of Studies Required. Section 8 of the Federal Water Project Recreation Act (Act of July 9, 1965, 79 Stat. 213, 217, 16 U.S.C. § 460*l*-19) requires specific authorization by law for the preparation of any feasibility report for a water resource project under Reclamation law. The 1965 Act appears in Volume III at page 1826.

Legislative History. S. 1788, Public Law 90-254 in the 90th Congress. Reported in Senate from Interior and Insular Affairs May 23, 1967; S. Rept. No. 285. Passed Senate May 24, 1967. Passed House, amended, September 18, 1967. Senate agrees to House amendments with an amendment October 17, 1967. House asks for a conference October 19, 1967. Senate agrees to a conference November 7, 1967. Senate agrees to conference report January 29, 1968. Conference report filed January 30, 1968; H.R. Rept. No. 1065. House agrees to conference report February 1, 1968. Companion bill H.R. 10130 reported in House from Interior and Insular Affairs September 12, 1967; H.R. Rept. No. 635.

CREDITS TO KINGS RIVER WATER ASSOCIATION

An act to provide for credit to the Kings River Water Association and others for excess payments for the years 1954 and 1955. (Act of March 2, 1968, Public Law 90-260, 82 Stat. 39)

[Sec. 1. Credit authorized—Condition.]—The Secretary of the Interior shall credit outstanding obligations of all members of the Kings River Water Association incurred pursuant to the master agreement among the members and the association and the United States dated December 30, 1963, and the Alta Irrigation District, Consolidated Irrigation District, Fresno Irrigation District, Kings River Water District and Tulare Lake Canal Company pursuant to agreements dated December 23, 1963, in a total amount of $1,098,597.92 representing excess payments over their share of the operation and maintenance charges of Pine Flat Reservoir, Kings River, California, during the years 1954 and 1955. Such amount shall be credited to the total repayment obligation and not to the annual installments thereof. (82 Stat. 39)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Purpose of the Act. The report of the House Committee on Interior and Insular Affairs states: "The purpose of S. 2402 is to provide an equitable settlement of a long-standing controversy between the Department of the Interior and the Kings River Water Association and other irrigation organizations in California. It has been the contention of these organizations that certain payments made by them in 1954 and 1955 under temporary water supply contracts were in excess of their proper shares of the operation and maintenance costs of Pine Flat Dam during that period and that the excess should be refunded to them or credited to other obligations incurred by them. The Secretary of the Interior, on the other hand, has taken the position that he has no authority to make such adjustments, and the Comptroller General has supported his position.

"In order to solve this controversy, S. 2402 proposes to direct the Secretary of the Interior to credit the sum of approximately $1,100,000 against outstanding obligations of the organizations concerned: i.e., the obligations of members of the Kings River Water Association and the obligations of the Alta, Consolidated, and Fresno Irrigation Districts, the Kings River Water District, and the Tulare Lake Canal Co. The obligations against which the credits are to be applied arise under contracts entered into pursuant to the Federal reclamation laws in December 1963. The amount to be credited is equal to those parts of the payments made in 1954 and 1955 by the organizations named which, as said above, were greater than necessary to cover their shares of the operation and maintenance costs of Pine Flat Reservoir. There is no disagreement on the amount." H.R. Rept. No. 1088, 90th Cong., 2d Sess. 1 (1968).

Cross Reference, Pine Flat Reservoir. Section 10 of the Flood Control Act of 1944 (58 Stat. 887, 900) authorized a project for flood control and other purposes for the Kings River and Tulare Lake Basin, California. This included authorization of the Pine Flat Reservoir and superseded a finding of feasibility by the Secretary of the Interior dated January 24, 1940, submitted to Congress February 10, 1940, which authorized the Kings River Project as a Reclamation project. Section 10 of the 1944 Act appears in Volume II at page 809.

Legislative History. S. 2402, Public Law 90-260 in the 90th Congress. Reported in Senate from Interior and Insular Affairs December 5, 1967; S. Rept. No. 837. Passed Senate December 6, 1967. Reported in House from Interior and Insular Affairs February 7, 1968; H.R. Rept. No. 1088. Passed House February 19, 1968.

LAKE OAHE

An act to designate the Oahe Reservoir on the Missouri River in the States of North Dakota and South Dakota as Lake Oahe. (Act of March 21, 1968, Public Law 90-270, 82 Stat. 51)

[Sec. 1. Designation of Lake Oahe.]—The Oahe Reservoir on the Missouri River in the States of North Dakota and South Dakota shall be known and designated hereafter as Lake Oahe in honor of the Indian people who inhabited the great Missouri River Basin. Any law, regulation, document, or record of the United States in which such reservoir is referred to by any other name shall be held and considered to refer to such reservoir by the name of Lake Oahe. (82 Stat. 51)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 2901, Public Law 90-270 in the 90th Congress. Reported in House from Interior and Insular Affairs February 5, 1968; H.R. Rept. No. 1072. Passed House February 19, 1968. Reported in Senate from Interior and Insular Affairs February 28, 1968; S. Rept. No. 1011. Passed Senate March 11, 1968.

WATER DELIVERY CONTRACTS, NAVAJO RESERVOIR

A joint resolution to approve long-term contracts for delivery of water from Navajo Reservoir in the State of New Mexico, and for other purposes. (Joint Resolution of March 22, 1968, Public Law 90-272, 82 Stat. 52)

Whereas section 11 (a) of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), provides that: "No long-term contract, except contracts for the benefit of the lands and for the purposes specified in sections 2 (Navajo Indian irrigation project) and 8 (San Juan-Chama project) of this Act, shall be entered into for the delivery of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigation that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in articles III and XIV of the Upper Colorado River Basin Compact, and has submitted such determination to the Congress of the United States and the Congress has approved such contracts."; and

Whereas the Secretary has made such determination in connection with the following contracts transmitted to Congress by letter dated November 21, 1967:

	Water diversion (acre-feet)	Estimated water depletion (acre-feet)	Proposed uses
Public Service Company of New Mexico	20,200	16,200	Thermal-electric generation,
Southern Union Gas Company	50	50	Pump cooling.
Utah Construction and Mining Company	44,000	35,300	Thermal-electric generation.
	64,250	51,550	

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That such contracts are hereby approved by the Congress. The Secretary may enter into amendments thereto which would in his judgment be in the interest of water conservation, but the total water depletion shall not exceed the estimates set forth in this joint resolution. (82 Stat. 52)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of June 13, 1962 (76 Stat. 96), referred to in the text, authorized the construction of the Navajo Indian irrigation project and the San Juan-Chama project, initial stage. The 1962 Act appears in Volume III at page 1658.

Legislative History. S.J. Res. 123, Public Law 90-272 in the 90th Congress. Reported in Senate from Interior and Insular Affairs November 29, 1967; S. Rept. No. 821. Passed Senate November 30, 1967. Reported in House from Interior and Insular Affairs February 27, 1968; H.R. Rept. No. 1106. Passed House, amended, March 4, 1968. Senate agrees to House amendment March 7, 1968.

RELIEF OF ADAMS, ET AL.

An act for the relief of James W. Adams and others. (Act of April 24, 1968, Private Law 90-212, 82 Stat. 1378)

[Sec. 1. Relief of liability—Credit—Refund—Agent or attorney fee limited.] — The following employees of the Bureau of Reclamation who received the overpayment of per diem compensation listed opposite their names for the period from July 15, 1963, through August 14, 1963, which overpayment resulted from administrative error in authorizing a retroactive increase in the per diem rate, are hereby relieved of all liability to refund to the United States the amount of such overpayment.

Employees	Overpayment
James W. Adams	$176.75
James L. Erickson	192.25
Allen D. Milner	192.25
Ansen L. Phillips	121.25
Donald W. Stackhouse	192.25
James A. Stradley	192.25

(b) In the audit and settlement of the accounts of any certifying or disbursing office of the United States, full credit shall be given for the amount for which liability is relieved by this Act.

(c) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to each of the said employees, the sum of any amount received or withheld from him on account of the payments referred to in the first section of this Act. No part of the amount appropriated in this Act 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 not withstanding. 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. (82 Stat. 1378)

EXPLANATORY NOTE

Legislative History. S. 234, Private Law 90-212 in the 90th Congress. Reported in Senate from Judiciary August 3, 1967; S. Rept. No. 486. Passed Senate August 4, 1967. Reported in House from Judiciary October 26, 1967; H.R. Rept. No. 835. Passed House, amended, January 16, 1968. Senate agrees to House amendment April 17, 1968.

AMENDED CONTRACT, FOSS RESERVOIR MASTER CONSERVANCY DISTRICT

An act to amend the repayment contract with the Foss Reservoir Master Conservancy District, and for other purposes. (Act of May 18, 1968, Public Law 90-311, 82 Stat. 125)

[Sec. 1. Feasibility study authorized.]—The Secretary of the Interior is authorized to conduct feasibility studies in the areas serving the Foss Reservoir Master Conservancy District to determine alternative water sources and the most practicable and feasible methods of alleviating the problems associated with the poor quality and supply of water stored in Foss Reservoir, Washita River Basin project, Oklahoma. (82 Stat. 124; 43 U.S.C. § 615 note)

Sec. 2. [Relief from obligation—Refund—Amended Contract—Penalties cancelled.]—In order to assist the Foss Reservoir Master Conservancy District in developing an adequate interim water supply, the Secretary of the Interior is authorized to relieve the District (1) of the obligations of making any further construction charge payments under its repayment contract with the United States, numbered 14-06-500-322, dated February 14, 1958, as amended, and (2) of any interest accrual on its total obligation, until initial delivery of water is made which the Secretary considers to be satisfactory for municipal and industrial use. The Secretary is also authorized (a) to refund to the District the amount of $218,364.62, representing the amount already paid under such contract and to revise such contract by adding such amount to the obligation for future payment, (b) to further revise such contract so that further payments on its construction charge obligation will be rescheduled in a manner satisfactory to the Secretary over a period not to exceed fifty years from the date of the aforementioned delivery of water, and (c) to cancel any penalties which have accrued on any unpaid matured construction charge payments. (82 Stat. 125; 43 U.S.C. § 615 note)

Sec. 3. [Appropriation authorization.]—The Secretary of the Interior may use any funds that are otherwise available to him to carry out this Act. (82 Stat. 125; 43 U.S.C. § 615 note)

Explanatory Notes

Background. The report of the House Committee on Interior and Insular Affairs states: "At the end of 1967, the 424,000 acre-feet Foss Reservoir contained only about 77,000 acre-feet of water and its salinity content was too high to make it usable. The cities of Clinton, Bessie, Cordell, and Hobart, Oklahoma, find themselves in the unfortunate position of being obligated to pay for the delivery of water which their citizens cannot drink. Further payments under the contract need to be postponed and the amounts already paid refunded in order that the cities may find temporary alternative sources of water pending resolution of the water quality problem." H.R. Rept. No. 1293, 90th Cong., 2d Sess. 2 (1968).

Cross Reference, Foss Reservoir. Foss Reservoir, Washita River Basin project, was authorized by the Act of February 25, 1956 (70

Stat. 28). The 1956 Act appears in Volume II at page 1242.

Legislative History. S. 1946, Public Law 90-311 in the 90th Congress. Reported in Senate from Interior and Insular Affairs October 31, 1967; S. Rept. No. 702. Passed Senate November 6, 1967. Reported in House from Interior and Insular Affairs April 11, 1968; H.R. Rept. No. 1293. Passed House May 6, 1968.

INCREASED AUTHORIZATION, MISSOURI RIVER BASIN PROJECT

An act to increase the authorization of appropriation for continuing work in the Missouri River Basin by the Secretary of the Interior. (Act of May 24, 1968, Public Law 90-315, 82 Stat. 129)

[Sec. 1. Increased appropriation authorized.]—There is hereby authorized to be appropriated for fiscal years 1969 and 1970 the sum of $59,000,000 for continuing the work in the Missouri River Basin to be undertaken by the Secretary of the Interior pursuant to the comprehensive plan adopted by section 9(a) of the Act approved December 22, 1944 (Public Law Numbered 534, Seventy-eighth Congress), as amended and supplemented by subsequent Acts of Congress. No part of the funds hereby authorized to be appropriated shall be available to initiate construction of any unit of the Missouri River Basin project, whether included in said comprehensive plan or not. (82 Stat. 129)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in the text, appears in Volume II at page 806.

Legislative History. S. 3033, Public Law 90-315 in the 90th Congress. Reported in Senate from Interior and Insular Affairs March 25, 1968; S. Rept. No. 1018. Passed Senate March 26, 1968. Reported in House from Interior and Insular Affairs April 29, 1968; H.R. Rept. No. 1326. Passed House May 13, 1968.

SEVERANCE PAYMENTS, INTERIOR EMPLOYEES

An act to make certain reclamation project expenses nonreimbursable. (Act of July 13, 1968, Public Law 90-400, 82 Stat. 354)

[Sec. 1. Severance payments nonreimbursable and nonreturnable.]—Notwithstanding any provision of the Federal reclamation laws, as amended and supplemented, (a) severance payments heretofore made to employees of the Department of the Interior resulting from the transfer to the A and B Irrigation District of operation and maintenance responsibilities for the North Side pumping division of the Minidoka Federal reclamation project, Idaho, and (b) severance payments which hereafter may be made to employees of the Department of the Interior as a result of the transfer to the Quincy-Columbia Basin Irrigation District, the East Columbia Basin Irrigation District, and the South Columbia Basin Irrigation District of operation and maintenance responsibilities for the irrigation facilities of the Columbia Basin Federal reclamation project, Washington, shall be nonreimbursable and nonreturnable. (82 Stat. 354)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1251, Public Law 90-400 in the 90th Congress. Reported in Senate from Interior and Insular Affairs July 28, 1967; S. Rept. No. 457. Passed Senate August 2, 1967. Reported in House from Interior and Insular Affairs June 11, 1968; H.R. Rept. No. 1538. Passed House, amended, June 17, 1968. Senate agrees to House amendment July 2, 1968.

NATIONAL FLOOD INSURANCE ACT OF 1968

[Extracts from] An act to assist in the provision of housing for low and moderate income families, and to extend and amend laws relating to housing and urban development. (Act of August 1, 1968, Public Law 90-448, 82 Stat. 476)

* * * * *

TITLE XIII—NATIONAL FLOOD INSURANCE

Editor's Note. Title XIII of the Housing and Urban Development Act of 1968 has been extensively amended since its enactment. For editorial convenience, the extracts set forth below appear substantially as they are contained in Chapter 50 of title 42 of the U.S. Code as of January 13, 1983 (42 U.S.C., 1982 ed.).

§ 4001. Congressional findings and declaration of purpose.

(a) Necessity and reasons for flood insurance program

The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation's resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and experience is appraised, thus eventually making flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.

(b) Participation of Federal Government in flood insurance program carried out by private insurance industry

The Congress also finds that (1) many factors have made it uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but (2) a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible and can be initiated.

(c) Unified national program for flood plain management

The Congress further finds that (1) a program of flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing

exposure of property to flood losses; and (2) the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this chapter the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection.

(d) Authorization of flood insurance program; flexibility in program

It is therefore the purpose of this chapter to (1) authorize a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry, and (2) provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public.

(e) Land use adjustments by State and local governments; development of proposed future construction; assistance of lending and credit institutions; relation of Federal assistance to all flood-related programs; continuing studies

It is the further purpose of this chapter to (1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government, and (5) authorize continuing studies of flood hazards in order to provide for a constant reappraisal of the flood insurance program and its effect on land use requirements.

(f) Mudslides

The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this chapter to make available, by means of the methods, procedures, and instrumentalities which are otherwise

established or available under this chapter for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground.

(g) Erosion and undermining of shorelines by waves or currents

The Congress also finds that (1) the damage and loss which may result from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this chapter to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this chapter for purposes of the flood insurance program, protection against damage and loss resulting from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels. (Pub. L. 90-448, title XIII, § 1302, Aug. 1, 1968, 82 Stat. 572; Pub. L. 91-152, title IV, § 409(a), Dec. 24, 1969, 83 Stat. 397; Pub. L. 93-234, title I, § 108(a), Dec. 31, 1973, 87 Stat. 979.)

§ 4002. Additional Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;

(2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;

(3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;

(4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;

(5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and

(6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access

to more adequate limits of coverage, so that they will be indemnified, for their losses in the event of future flood disasters.

(b) The purpose of this Act, therefore, is to—

(1) substantially increase the limits of coverage authorized under the national flood insurance program;

(2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;

(3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plan ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and

(4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards. (Pub. L. 93-234, § 2, Dec. 31, 1973, 87 Stat. 975.)

§ 4003. Additional definitions

(a) As used in this Act, unless the context otherwise requires, the term—

(1) "community" means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;

(2) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(3) "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;

(4) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood);

(5) "Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration; and

(6) "Director" means the Director of the Federal Emergency Management Agency.

(b) The Director is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act. (Pub. L. 93-234, § 3, Dec. 31, 1973, 87 Stat. 976; Pub. L. 95-128, title VII, § 703(b), Oct. 12, 1977, 91 Stat. 1145; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

EXPLANATORY NOTE

Reference in the Text. The Disaster Relief Act of 1974 (Act of May 22, 1974, Public Law 93-288, 88 Stat. 143, 42 U.S.C. § 5121), referred to in subsection (a)(4) of the text, appears in Volume IV in chronological order.

SUBCHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

§ 4011. Authorization to establish and carry out program; participation by insurance companies and other insurers

(a) To carry out the purposes of this chapter, the Director of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) In carrying out the flood insurance program the Director shall, to the maximum extent practicable, encourage and arrange for—

(1) appropriate financial participation and risk sharing in the program by insurance companies and other insurers, and

(2) other appropriate participation, on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, in accordance with the provisions of subchapter II of this chapter. (Pub. L. 90-448, title XIII, § 1304, Aug. 1, 1968, 82 Stat. 574; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4012. Scope of program and priorities

(a) Priority for insurance for certain residential and church properties and business concerns

In carrying out the flood insurance program the Director shall afford a priority to making flood insurance available to cover residential properties which are designed for the occupancy of from one to four families, church properties, and business properties which are owned or leased and operated by small business concerns.

(b) Availability of insurance for other properties

If on the basis of—

(1) studies and investigations undertaken and carried out and information received or exchanged under section 4014 of this title, and

(2) such other information as may be necessary,

the Director determines that it would be feasible to extend the flood insurance program to cover other properties, he may take such action under this chapter as from time to time may be necessary in order to make flood insurance available to cover, on such basis as may be feasible, any types and classes of—

(A) other residential properties,

(B) other business properties,

(C) agricultural properties,

(D) properties occupied by private nonprofit organizations, and

(E) properties owned by State and local governments and agencies thereof, and any such extensions of the program to any types and classes of these properties shall from time to time be prescribed in regulations.

(c) Availability of insurance in States or areas evidencing positive interest in securing insurance and assuring adoption of adequate land use and control measures

The Director shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have—

(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and

(2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 4102 of this title, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available. (Pub. L. 90-448, title XIII, § 1305, Aug. 1, 1968, 82 Stat. 574; Pub. L. 91-152; title IV, § 410(a), Dec. 24, 1969, 83 Stat. 397; Pub. L. 92-213, § 2(c)(1), Dec. 22, 1971, 85 Stat. 775; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4012a. Requirement of flood insurance for Federal approval of financial assistance

(a) Amount and term of coverage

After the expiration of sixty days following December 31, 1973, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land

cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: *Provided,* That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

* * * * *

(c) State-owned property; exemption; list of States

Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies. (Pub. L. 93-234, title I, § 102, Dec. 31, 1973, 87 Stat. 978; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4013. Nature and limitation of insurance coverage; regulations

(a) The Director shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 4012 of this title, including—

(1) the types, classes, and locations of any such properties which shall be eligible for flood insurance;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be advisable;

(4) appropriate minimum premiums;

(5) appropriate loss-deductibles; and

(6) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purposes of this chapter.

* * * * *

(Pub. L. 90-448, title XIII, § 1306, Aug. 1, 1968, 82 Stat. 575; Pub. L. 92-213, § 2(c)(2), Dec. 22, 1971, 85 Stat. 775; Pub. L. 93-234, title I, § 101, Dec. 31, 1973, 87 Stat. 977; Pub. L. 95-128, title VII, § 704(a), Oct. 12, 1977, 91 Stat. 1145; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4014. Estimates of premium rates

(a) Studies and investigations

The Director is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis—

(1) the risk premium rates for flood insurance which—

(A) based on consideration of the risk involved and accepted actuarial principles, and

(B) including—

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section 4018 of this title and reflected in such rates, and

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates.

would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section 4012(a) of this title (or is recommended to the Congress under section 4012(b) of this title);

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this chapter; and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after August 1, 1968, affect such rates.

(b) Utilization of services of other Departments and agencies

In carrying out subsection (a) of this section, the Director shall, to the maximum extent feasible and on a reimbursement basis, utilize the services of the Department of the Army, the Department of the Interior, the Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) Priority to studies and investigations in States or areas evidencing positive interest in securing insurance under program

The Director shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

* * * * *

(e) Eligibility of community making adequate progress on constuction of flood protection system for rates not exceeding those applicable

to completed flood protection system; determination of adequate progress

Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Director, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Director, shall be eligible for flood insurance under this chapter (if and to the extent it is eligible for such insurance under the other provisions of this chapter) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Director shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed. (Pub. L. 90-448, title XIII, § 1307, Aug. 1, 1968, 82 Stat. 576; Pub. L. 93-234, title I, § 109, Dec. 31, 1973, 87 Stat. 980; Pub. L. 93-383, title VIII, § 816(b), Aug. 22, 1974, 88 Stat. 739; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4015. Chargeable premium rates

(a) Establishment; terms and conditions

On the basis of estimates made under section 4014 of this title, and such other information as may be necessary, the Director shall from time to time, after consultation with the advisory committee authorized under section 4025 of this title, appropriate representatives of the pool formed or otherwise created under section 4051 of this title, and appropriate representatives of the insurance authorities of the respective States, prescribe by regulation—

(1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 4012 of this title (at less than the estimated risk premium rates under section 4014(a)(1) of this title, where necessary), and

(2) the terms and conditions under which, and the areas (including subdivisions thereof) within which, such rates shall apply.

(b) Considerations for rates

Such rates shall, insofar as practicable, be—

(1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures.

(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this chapter, and

(3) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 4014(a)(1) of this title and the estimated rates under section 4014(a)(2) of this title.

(c) Rate with respect to property the construction or substantial improvement of which has been started after December 31, 1974, or effective date of initial rate map published for area in which property is located, whichever is later

Notwithstanding any other provision of this chapter, the chargeable rate with respect to any property, the construction or substantial improvements of which the Director determines has been started after December 31, 1974, or the effective date of the initial rate map published by the Director under paragraph (2) of section 4101 of this title for the area in which such property is located, whichever is later, shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 4014(a)(1) of this title.

(d) Payment of certain sums to Director; deposits in Fund

In the event any chargeable premium rate prescribed under this section—

(1) is a rate which is not less than the applicable estimated risk premium rate under section 4014(a)(1) of this title, and

(2) includes any amount for administrative expenses of carrying out the flood insurance program which have been estimated under clause (ii) of section 4014(a)(1)(B) of this title, a sum equal to such amount shall be paid to the Director, and he shall deposit such sum in the National Flood Insurance Fund established under section 4017 of this title. (Pub. L. 90-448, title XIII, § 1308, Aug. 1, 1968, 82 Stat. 576; Pub. L. 93-234, title I, § 103, Dec. 31, 1973, 87 Stat. 978; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

* * * * *

§ 4019. Payment of claims

The Director is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this chapter. (Pub. L. 90-448, title XIII, § 1312, Aug. 1, 1968, 82 Stat. 579; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4020. Dissemination of flood insurance information

The Director shall from time to time take such action as may be necessary in order to make information and data available to the public, and to any State or local agency or official, with regard to—

(1) the flood insurance program, its coverage and objectives, and

(2) estimated and chargeable flood insurance premium rates, including the basis for and differences between such rates in accordance with the provisions of section 4015 of this title. (Pub. L. 90-448, title XIII, § 1313, Aug. 1, 1968, 82 Stat. 579; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

* * * * *

§ 4022. State and local land use controls

After December 31, 1971, no new flood insurance coverage shall be provided under this chapter in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Director finds are consistent with the comprehensive criteria for land management and use under section 4102 of this title. (Pub. L. 90-448, title XIII, § 1315, Aug. 1, 1968, 82 Stat. 580; Pub. L. 91-152, title IV, § 410(b), Dec. 24, 1969, 83 Stat. 397; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4023. Properties in violation of State and local law

No new flood insurance coverage shall be provided under this chapter for any property which the Director finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas. (Pub. L. 90-448, title XIII, § 1316, Aug. 1, 1968, 82 Stat. 580; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4024. Coordination with other programs

In carrying out this chapter, the Director shall consult with other departments and agencies of the Federal Government, and with interstate, State, and local agencies having responsibilities for flood control, flood forecasting, or flood damage prevention, in order to assure that the programs of such agencies and the flood insurance program authorized under this chapter are mutually consistent. (Pub. L. 90-448, title XIII, § 1317, Aug. 1, 1968, 82 Stat. 581; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

* * * * *

§ 4026. Expiration of program

No new contract for flood insurance under this chapter shall be entered into after May 20, 1983. (Pub. L. 90-448; title XIII, § 1319, Aug. 1, 1968, 82 Stat. 581; Pub. L. 93-4, Feb. 2, 1973, 87 Stat. 4; Pub. L. 93-

38, June 5, 1973, 87 Stat. 73; Pub. L. 93-234, title I, § 105, Dec. 31, 1973, 87 Stat. 979; Pub. L. 95-60, § 3, June 30, 1977, 91 Stat. 257; Pub. L. 95-80, § 3, July 31, 1977, 91 Stat. 339; Pub. L. 95-128, title VII, § 701(a), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95-406, § 6(a), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 308(a), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96-153, title VI, § 602(a), Dec. 21, 1979, 93 Stat. 1137; Pub. L. 97-35, title III, § 341(b)(1), Aug. 13, 1981, 95 Stat. 418; Pub. L. 97-289, § 4(a), Oct. 6, 1982, 96 Stat. 1231.)

§ 4027. Biennial report to President

The Director shall biennially submit a report of operations under this chapter to the President for submission to the Congress. (Pub. L. 90-448, title XIII, § 1320, Aug. 1, 1968, 82 Stat. 581; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789; Pub. L. 96-470, title II, § 205(b), Oct. 19, 1980, 94 Stat. 2244.)

* * * * *

SUBCHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§ 4101. Identification of flood-prone areas

(a) Publication of information; establishment of flood-risk zones; estimates of flood-caused loss

The Director is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which has special flood hazards, within five years following August 1, 1968, and

(2) establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas, within fifteen years following such date.

(b) Accelerated identification of flood-risk zones; authority of Director: grants, technical assistance, transactions, and payments

The Director is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Director is authorized, without regard to section 3324(a) and (b) of title

31 and section 5 of title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modification thereof, and to make advance or progress payments in connection therewith.

(c) Priority in allocation of manpower and other available resources for identification and mapping of flood hazard areas and flood-risk zones

The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Director, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Director to meet the deadline established by this section. (Pub. L. 90-448, title XIII, § 1360, Aug. 1, 1968, 82 Stat. 587; Pub. L. 93-234, title II, § 204, Dec. 31, 1973, 87 Stat. 983; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

EXPLANATORY NOTE

References in the Text. Section 3324 of title 31 of the U.S. Code, referred to in subsection (b) of the text, deals with conditions and restrictions on payments by the Government under contract and advances of public money. Section 3324 of title 31 appears in the new Appendix in Supplement I. It replaces 31 U.S.C. § 529, which appears in Volume III at page 1962. Section 5 of title 41 of the U.S. Code, also referred to in subsection (b), provides that with certain exceptions, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals. Section 5 of title 41 appears in Volume III, Appendix, at page 1987and in the new Appendix in Supplement I.

§ 4102. Criteria for land management and use

(a) Studies and investigations

The Director is authorized to carry out studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements, or other appropriate arrangements to carry out such authority.

(b) Extent of studies and investigations

Such studies and investigations shall include, but not be limited to, laws, regulations, or ordinances relating to encroachments and obstructions on

stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.

(c) Development of comprehensive criteria designed to encourage adoption of adequate State and local measures

On the basis of such studies and investigations, and such other information as he deems necessary, the Director shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will—

(1) constrict the development of land which is exposed to flood damage where appropriate,

(2) guide the development of proposed construction away from locations which are threatened by flood hazards,

(3) assist in reducing damage caused by floods, and

(4) otherwise improve the long-range land management and use of flood-prone areas, and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures. (Pub. L 90-448, title XIII, § 1361, Aug. 1, 1968, 82 Stat. 587; Pub. L. 91-152, title IV, § 410(c), Dec. 24, 1969, 83 Stat. 397; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4103. Purchase of insured properties damaged substantially beyond repair by flood

(a) Transfers to State or local agencies for use for prescribed period consistent with sound land management and use

The Director may, when he determines that the public interest would be served thereby, enter into negotiations with any owner of real property or interest therein which—

(1) was located in any flood-risk area, as determined by the Director,

(2) was covered by flood insurance under the flood insurance program authorized under this chapter, and

(3) incurred significant flood damage on not less than three previous occasions over a five-year period of time and on each occasion the cost of repair, on the average, equaled or exceeded 25 per centum of the value of the structure at the time of each flood event or was damaged substantially beyond repair by flood while so covered, and may purchase such property or interests therein, for subsequent transfer, by sale, lease, donation, or otherwise, to any State or local agency which enters into an agreement with the Director that such property shall, for a period not less than forty years following transfer, be used for only such purposes as the Secretary may, by regulation, determine to be consistent with sound land management and use in such area.

(b) Real property purchases; single casualty damages

When any real property referred to in paragraphs (1) and (2) of subsection (a) of this section has sustained damage as a result of a single casualty of any nature under such circumstances that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at a significantly increased construction cost, the Director may enter into negotiations with the owner of the property or interest therein for the purchase of such property for the uses and purposes of this section.

(c) Low-interest loans for single-family dwellings; authorization of appropriations

Whenever, as a result of damage from any casualty, the repair, reconstruction, or substantial improvement of any single-family dwelling structure located within a regulatory floodway and insured under the flood insurance program is deemed by the Director to be made more effective from the standpoint of prudent flood plain management by elevation of the structure so it will not interfere with the flow of water from the base flood within such regulatory floodway, the Director is authorized to make a low-interest loan at a rate of interest of 2 per centum per annum, repayable in ten years, to the owner of any such structure for the purpose of so elevating the structure. There is authorized to be appropriated for purposes of implementing this subsection not to exceed $4,500,000.

(d) Regulations

The Director is authorized to issue such regulations as may be necessary to carry out the purposes of this section. (Pub. L. 90-448, title XIII, § 1362, Aug. 1, 1968, 82 Stat. 588; Pub. L. 95-128, title VII, § 704(b), Oct. 12, 1977, 91 Stat. 1145; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4104. Flood elevation determinations

(a) Publication or notification of proposed flood elevation determinations

In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 4102 of this title, the Director shall first propose such determinations by publication for comment in the Federal Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.

(b) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations

The Director shall publish notification of flood elevation determinations in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the ninety-day period

following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the Director's proposed determination may appeal such determination to the local government. The sole basis for such appeal shall be the possession of knowledge or information indicating that the elevations being proposed by the Director with respect to an identified area having special flood hazards are scientifically or technically incorrect, and the sole relief which shall be granted under the authority of this section in the event that such appeal is sustained in accordance with subsection (e) or (f) of this section is a modification of the Director's proposed determination accordingly.

(c) Appeals by private persons; submission of negativing or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Director; filing of community action with Director

Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Director's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Director's determination, copies of individual appeals shall be sent to the Director as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Director not later than ninety days after the date of the second newspaper publication of the Director's notification.

(d) Administrative review of appeals by private persons; modification of proposed determinations; decision of Director; form and distribution

In the event the Director does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e) of this section, the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Director's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Director; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information

Upon appeal by any community, as provided by this section, the Director shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Director shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice. Until the conflict in data is resolved, and the Director makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Director shall make his determination within a reasonable time. The community shall be given a reasonable time after the Director's final determination in which to adopt local land use and control measures consistent with the Director's determination. The reports and other information used by the Director in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) Reimbursement of certain expenses; appropriation authorization

When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed $250,000.

(g) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations.

Any appellant aggrieved by any final determination of the Director upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Director shall be effective for the purposes of this chapter unless stayed by the court for good cause shown. (Pub. L. 90-448, title XIII, § 1363, as added Pub. L. 93-234, title I, § 110, Dec. 31, 1973, 87 Stat. 980, and amended Pub. L. 95-128, title VII, § 704(c), Oct 12,

1977, 91 Stat. 1146; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4104a. Notification of purchaser or lessee of special flood hazards in area of location of improved real estate or mobile home securing loan; regulations prescribing procedures

Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation require such institutions, as a condition of making, increasing, extending, or renewing (after the expiration of thirty days following August 22, 1974) any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director under this chapter or Public Law 93-234 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. (Pub. L. 90-448, title XIII, § 1364, as added Pub. L. 93-383, title VIII, § 816(a), Aug. 22, 1974, 88 Stat. 739, and amended 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

EXPLANATORY NOTE

Reference in the Text. Public Law 93-234, referred to in the text, is the Flood Disaster Protection Act of 1973 (Act of December 31, 1973, 87 Stat. 975). The Act does not appear herein.

§ 4105. Disaster mitigation requirements; notification to flood-prone areas

(a) Initial notification

Not later than six months following December 31, 1973, the Director shall publish information in accordance with section 4104(1) of this title, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) Alternative actions of tentatively identified communities; public hearing; opportunity for submission of evidence; finality of administrative determination of existence or extent of flood hazard area.

After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Director that the community either is not seriously flood prone or that such flood hazards as may have existed

have been corrected by floodworks or other flood control methods. The Director may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the Director decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the Director's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

(c) Subsequent notification to additional communities known to be flood prone areas

As information becomes available to the Director concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

(d) Provisions of section 4106 applicable to flood-prone communities disqualified for flood insurance program

Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 4106 of this title, whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program.

(e) Administrative procedures; establishment; reimbursement of certain expenses; appropriation authorization

The Director is authorized to establish administrative procedures whereby the identification under this section of one or more areas in the community as having special flood hazards may be appealed to the Director by the community or any owner or lessee of real property within the community who believes his property has been inadvertently included in a special flood hazard area by the identification. When, incident to any appeal under this subsection, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection not to exceed $250,000. (Pub. L. 93-234, title II, § 201, Dec. 31, 1973, 87 Stat. 982; Pub. L. 95-128, title

VII, § 704(d), Oct. 12, 1977, 91 Stat. 1146; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4106. Nonparticipation in flood insurance program

(a) Prohibition against Federal approval of financial assistance

No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Notification of purchaser or lessee of property in flood hazard area of availability of Federal disaster relief assistance in the event of a flood disaster

In addition to the requirements of section 4104a of this title, each Federal instrumentality described in such section shall by regulation require the institutions described in such section to notify (as a condition of making, increasing, extending, or renewing any loan secured by property described in such section) the purchaser or lessee of such property of whether, in the event of a disaster caused by flood to such property, Federal disaster relief assistance will be available to such property. (Pub. L. 93-234, title II, § 202, Dec. 31, 1973, 87 Stat. 982; Pub. L. 94-50, title III, § 303, July 2, 1975, 89 Stat. 256; Pub. L. 94-198, Dec. 31, 1975, 89 Stat. 1116; Pub. L. 94-375, § 14(a), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95-128, title VII, § 703(a), Oct. 12, 1977, 91 Stat. 1144; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4107. Consultation with local officials; scope

In carrying out his responsibilities under the provisions of this title and the National Flood Insurance Act of 1968 which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the Director shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local governments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultation shall include, but not be limited to, fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Director concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The Director shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency during the course of the study. (Pub. L. 93-234, title II,

§ 206, Dec. 31, 1973, 87 Stat. 983; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

SUBCHAPTER IV—GENERAL PROVISIONS

§ 4121. Definitions

(a) As used in this chapter—

(1) the term "flood" shall have such meaning as may be prescribed in regulations of the Director, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms "United States" (when used in a geographic sense) and "State" includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms "insurance company", "other insurer" and "insurance agent or broker" include any organizations and persons authorized to engage in the insurance business under the laws of any State;

(4) the term "insurance adjustment organization" includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term "person" includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof; and

(6) the term "Director" means the Director of the Federal Emergency Management Agency.

(b) The term "flood" shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this chapter shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this chapter (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Director may prescribe to achieve (with respect to such mudslides) the purposes of this chapter and the objectives of the program.

(c) The term "flood" shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this chapter shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this chapter (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Director

may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this chapter and the objectives of the program. (Pub. L. 90-448, title XIII, § 1370, Aug. 1, 1968, 82 Stat. 588; Pub. L. 91-152, title IV, § 409(b), Dec. 24. 1969, 83 Stat. 397; Pub. L. 93-234, title I §§ 107, 108(b), Dec. 31, 1973, 87 Stat, 979, 980; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4122. Studies of other natural disasters; cooperation and consultation with other departments and agencies

(a) The Director is authorized to undertake such studies as may be necessary for the purpose of determining the extent to which insurance protection against earthquakes or any other natural disaster perils, other than flood, is not available from public or private sources, and the feasibility of such insurance protection being made available.

(b) Studies under this section shall be carried out, to the maximum extent practicable, with the cooperation of other Federal departments and agencies and State and local agencies, and the Director is authorized to consult with, receive information from, and enter into any necessary agreements or other arrangements with such other Federal departments and agencies (on a reimbursement basis) and such State and local agencies. (Pub. L. 90-448, title XIII, § 1371, Aug. 1, 1968, 82 Stat. 588; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4123. Advance payments

Any payments under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Director may determine. (Pub. L. 90-448, title XIII, § 1372, Aug. 1, 1968, 82 Stat. 589; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

§ 4124. Applicability of fiscal controls

The provisions of chapter 91 of title 31 shall apply to the program authorized under this chapter to the same extent as they apply to wholly owned Government corporations. (Pub. L. 90-448, title XIII, § 1373, Aug. 1, 1968, 82 Stat. 589.)

EXPLANATORY NOTE

Reference in the Text. Chapter 91 of title 31 of the U.S. Code, referred to in the text, deals with Presidential and Congressional review of budgets of wholly owned Government corporations, Comptroller General audits of financial transactions of Government corporations, and issuance of obligations to the public by such corporations. No part of Chapter 91 of title 31 appears herein.

§ 4125. Finality of certain financial transactions

Notwithstanding the provisions of any other law—

(1) any financial transaction authorized to be carried out under this chapter, and

(2) any payment authorized to be made or to be received in connection with any such financial transaction, shall be final and conclusive upon all officers of the Government. (Pub. L. 90-448, title XIII, § 1374, Aug. 1, 1968, 82 Stat. 589.)

§ 4126. Administrative expenses

Any administrative expenses which may be sustained by the Federal Government in carrying out the flood insurance program authorized under this chapter may be paid out of appropriated funds. (Pub. L. 90-448, title XIII, § 1375, Aug. 1, 1968, 82 Stat. 589.)

* * * * *

§ 4128. Rules and regulations

(a) The Director is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Director, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act. (Pub. L. 93-234, title II, § 205, Dec. 31, 1973, 87 Stat. 983; 1978 Reorg. Plan No. 3, § 202, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3789.)

EXPLANATORY NOTE

Legislative History. S. 3497, Public Law 90-448 in the 90th Congress. Reported in Senate from Banking and Currency May 15, 1968; S. Rept. No. 1123. Passed Senate May 28, 1968. Passed House, amended, July 10, 1968. House asks for a conference July 10, 1968. Senate agrees to a conference July 11, 1968. Conference report filed July 23, 1968; S. Rept. No. 1785. Senate agrees to conference report July 25, 1968. House agrees to conference report July 26, 1968. Companion bill H.R. 17989 reported in House from Banking and Currency June 25, 1968; H.R. Rept. No. 1585.

OAHE UNIT, MISSOURI RIVER BASIN PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the initial stage of the Oahe unit, James division, Missouri River Basin project, South Dakota, and for other purposes. (Act of August 3, 1968, Public Law 90-453, 82 Stat. 624).

[Sec. 1. Oahe unit, Missouri River Basin Project, authorized.]—The Secretary of the Interior is hereby authorized to construct, operate, and maintain in accordance with the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto) the initial stage of the Oahe unit, James division, Missouri River Basin project, South Dakota, for the principal purposes of furnishing a surface irrigation water supply for approximately one hundred and ninety thousand acres of land, furnishing water for municipal and industrial uses, controlling floods, conserving and developing fish and wildlife resources, and enhancing outdoor recreation opportunities, and other purposes. The principal features of the initial stage of the Oahe unit shall consist of the Oahe pumping plant (designed to provide for future enlargement) to pump water from the Oahe Reservoir, a system of main canals, regulating reservoirs, and the James diversion dam and the James pumping plant on the James River. The remaining works will include appurtenant pumping plants, canals, and laterals for distributing water to the land, and a drainage system. (82 Stat. 624)

Sec. 2. [Conservation and development of fish and wildlife—Recreation enhancement—condition precedent to construction.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the initial stage of the Oahe unit shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). Construction of the initial stage of the Oahe unit shall not be commenced as long as the State of South Dakota retains in its laws provisions that prohibit the hunting of migratory waterfowl by nonresidents in the waterfowl enhancement areas included within the area served by the project herein authorized. (82 Stat. 624)

NOTE OF OPINION

1. Nonresident hunting

Congress did not intend to limit the operation of the second sentence of section 2 of the Act of August 3, 1968 to waterfowl areas administratively designated as "enhancement areas," but rather required South Dakota to repeal its prohibition against the hunting of migratory waterfowl by nonresidents for all Oahe Unit waterfowl development areas. The distinction between "enhancement areas" and "mitigation areas," as employed in the report of the Fish and Wildlife Service, was created for administrative and budgetary purposes and at no point was this distinction discussed with the Congress. Moreover, the House Report and the hearings show that Congress did not want Federal funds spent to improve a State resource that the majority of citizens could not enjoy and the repeal of the State's prohibition against nonresident hunting for "enhancement areas" only would result in this ban remaining on approximately one-third of the hunting lands. Memorandum of Solicitor Weinberg to Secretary of Interior, February 11, 1969.

Sec. 3. [Integration with other works.]—The Oahe unit shall be integrated physically and financially with the other Federal works constructed or authorized to be constructed under the comprehensive plan approved by section 9 of the Act of December 22, 1944, as amended and supplemented. (82 Stat. 625)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented, referred to in the text, authorized the comprehensive development of the Missouri River Basin. Section 9 appears in Volume II at page 806.

Sec. 4. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marked is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (82 Stat. 625)

EXPLANATORY NOTES

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Error in the Text of the Statute. The word "marked" following "would normally be" and preceding "is in excess of" should probably be "marketed".

Sec. 5. [Interest rate.]—The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (82 Stat. 625)

Sec. 6. [Appropriation authorization.]—There is hereby authorized to be appropriated for construction of the initial stage of the Oahe unit as authorized in this Act the sum of $191,670,000 (based upon January 1964 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit. (82 Stat. 625)

EXPLANATORY NOTES

Codification Omitted. This Act originally was codified at 43 U.S.C. §§ 616ttt to 616yyy but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. S. 6, Public Law 90-453 in the 90th Congress. Reported in Senate from Interior and Insular Affairs October 31, 1967; S. Rept. No. 699. Passed Senate November 1, 1967. Reported in House from Interior and Insular Affairs July 2, 1968; H.R. Rept. No. 1612. Passed House, amended, July 15, 1968. Senate agrees to House amendment July 22, 1968.

NOTE OF OPINION

1. Contracts

Although construction of the Oahe Unit of the Pick-Sloan Missouri Basin Program has been halted because of an erosion of local support and completion is buestionable, the Secretary does not have authority to terminate the security contract between the United States and the Spink County Irrigation District, which obligates the district to repay its proportionate share of all reimbursable charges not paid by the Oahe Conservancy Subdistrict, or agree to the termination of the participating contract between the Irrigation District and the Conservancy District, which obligates the former to pay the latter for specific project benefits it receives, because an administrative officer may not waive contract rights of the United States without consideration, and because termination of the contracts would constitute a *de facto* deauthorization of the project, and Congress alone has authority to take such action. Memorandum of Associate Solicitor Leshy to Commissioner of Reclamation, November 30, 1979.

ESTUARIES STUDIES AND PLANNING

An act to authorize the Secretary of the Interior, in cooperation with the States, to conduct an inventory and study of the Nation's estuaries and their natural resources, and for other purposes. (Act of August 3, 1968, Public Law 90-454, 82 Stat. 625)

[Sec. 1. Findings and policy.]—Congress finds and declares that many estuaries in the United States are rich in a variety of natural, commercial, and other resources, including environmental natural beauty, and are of immediate and potential value to the present and future generations of Americans. It is therefore the purpose of this Act to provide a means for considering the need to protect, conserve, and restore these estuaries in a manner that adequately and reasonably maintains a balance between the national need for such protection in the interest of conserving the natural resources and natural beauty of the Nation and the need to develop these estuaries to further the growth and development of the Nation. In connection with the exercise of jurisdiction over the estuaries of the Nation and in consequence of the benefits resulting to the public, it is declared to be the policy of Congress to recognize, preserve, and protect the responsibilities of the States in protecting, conserving, and restoring the estuaries in the United States. (82 Stat. 625; 16 U.S.C. § 1221)

Sec. 2. (a) [Study authorized—Criteria.]—The Secretary of the Interior, in consultation and in cooperation with the States, the Secretary of the Army, and other Federal agencies, shall conduct directly or by contract a study and inventory of the Nation's estuaries, including without limitation coastal marshlands, bays, sounds, seaward areas, lagoons, and land and waters of the Great Lakes. For the purpose of this study, the Secretary shall consider, among other matters, (1) their wildlife and recreational potential, their ecology, their value to the marine, anadromous, and shell fisheries and their esthetic value, (2) their importance to navigation, their value for flood, hurricane, and erosion control, their mineral value, and the value of submerged lands underlying the waters of the estuaries, and (3) the value of such areas for more intensive development for economic use as part of urban developments and for commercial and industrial developments. This study and inventory shall be carried out in conjunction with the comprehensive estuarine pollution study authorized by section 5(g) of the Federal Water Pollution Control Act, as amended, and other applicable studies.

(b) [Focus of study.]—The study shall focus attention on whether any land or water area within an estuary and the Great Lakes should be acquired or administered by the Secretary or by a State or local subdivision thereof, or whether such land or water area may be protected adequately through local, State, or Federal laws or other methods without Federal land acquisition or administration.

(c) [Report required.]—The Secretary of the Interior shall, not later than January 30, 1970, submit to the Congress through the President a report

of the study conducted pursuant to this section, together with any legislative recommendations, including recommendations on the feasibility and desirability of establishing a nationwide system of estuarine areas, the terms, conditions, and authorities to govern such system, and the designation and acquisition of any specific estuarine areas of national significance which he believes should be acquired by the United States. No lands within such area may be acquired until authorized by subsequent Act of Congress. Recommendations made by the Secretary for the acquisition of any estuarine area shall be developed in consultation with the States, municipalities, and other interested Federal agencies. Each such recommendation shall be accompanied by (1) expressions of any views which the interested States, municipalities, and other Federal agencies and river basin commissions may submit within sixty days after having been notified of the proposed recommendations, (2) a statement setting forth the probable effect of the recommended action on any comprehensive river basin plan that may have been adopted by Congress or that is serving as a guide for coordinating Federal programs in the basin wherein such area is located, (3) in the absence of such a plan, a statement indicating the probable effect of the recommended action on alternative beneficial users of the resources of the proposed estuarine area, and (4) a discussion of the major economic, social, and ecological trends occurring in such area.

(d) [Appropriation authorization.]—There is authorized to be appropriated not to exceed $250,000 for fiscal year 1969 and $250,000 for fiscal year 1970 to carry out the provisions of this section. Such sums shall be available until expended. (82 Stat. 626; 16 U.S.C. § 1222)

EXPLANATORY NOTE

Reference in the Text. Section 5(g) of the Federal Water Pollution Control Act, referred to in subsection (a) of the text, appears in Volume II at page 1282. The Act was extensively revised by the Federal Water Pollution Control Act Amendments of 1972 (Act of October 18, 1972, Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code.

Sec. 3. [Agreements with States and subdivisions for management of lands.]—After the completion of the general study authorized by section 2 of this Act, the Secretary of the Interior, with the approval of the President, may enter into an agreement, containing such terms and conditions as are mutually acceptable, with any State or with a political subdivision or agency thereof (if the agreement with such subdivision or agency is first approved by the Governor of the State involved or by a State agency designated for that purpose) for the permanent management, development, and administration of any area, land, or interests therein within an estuary and adjacent lands which are owned or thereafter acquired by a State or by any political subdivision thereof: *Provided,* That, with the approval of the Governor of the State involved or of a State agency designated for that purpose, the Secretary may also enter into such an agreement for any particular area whenever the segment of the general study applicable to that

area is completed subject to the provisions of subsections (a) and (b) of section 2 of this Act. Such agreement shall, among other things, provide that the State or a political subdivision or agency thereof and the Secretary shall share in an equitable manner in the cost of managing, administering, and developing such areas, and such development may include the construction, operation, installation, and maintenance of buildings, devices, structures, recreational facilities, access roads, and other improvements, and such agreement shall be subject to the availability of appropriations. State hunting and fishing laws and regulations shall be applicable to such areas to the extent they are now or hereafter applicable. (82 Stat. 627; 16 U.S.C. § 1223)

Sec. 4. [Planning considerations.]—In planning for the use or development of water and land resources, all Federal agencies shall give consideration to estuaries and their natural resources, and their importance for commercial and industrial developments, and all project plans and reports affecting such estuaries and resources submitted to the Congress shall contain a discussion by the Secretary of the Interior of such estuaries and such resources and the effects of the project on them and his recommendations thereon. The Secretary of the Interior shall make his recommendations within ninety days after receipt of such plans and reports (82 Stat. 627; 16 U.S.C. § 1224)

Sec. 5. [Coordination with existing Federal programs.]—The Secretary of the Interior shall encourage States and local subdivisions thereof to consider, in their comprehensive planning and proposals for financial assistance under the Federal Aid in Wildlife Restoration Act (50 Stat. 917), as amended (16 U.S.C. 669 et seq.), the Federal Aid in Fish Restoration Act (64 Stat. 430), as amended (16 U.S.C. 777 et seq.), the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), the Commerical Fisheries Research and Development Act of 1964 (78 Stat. 197), and the Anadromous and Great Lakes Fisheries Conservation Act of October 30, 1965 (79 Stat. 1125), the needs and opportunities for protecting and restoring estuaries in accordance with the purposes of this Act. In approving grants made pursuant to said laws for the acquisition of all or part of an estuarine area by a State, the Secretary shall establish such terms and conditions as he deems desirable to insure the permanent protection of such areas, including a provision that the lands or interests therein shall not be disposed of by sale, lease, donation, or exchange without the prior approval of the Secretary. (82 Stat. 627; 16 U.S.C. § 1225).

EXPLANATORY NOTE

References in the Text. The Land and Water Conservation Fund Act of 1965 and the Anadromous and Great Lakes Fisheries Conservation Act of 1965, referred to in section 5 of the text, appear in Volume III at pages 1785 and 1860, respectively. The remaining Acts referred to in section 5 do not appear herein.

Sec. 6. [Authority of Federal agencies unaffected.]—Nothing in this Act shall be construed to affect the authority of any Federal agency to carry

out any Federal project heretofore or hereafter authorized within an estuary. (82 Stat. 627; 16 U.S.C. § 1226).

EXPLANATORY NOTE

Legislative History. H.R. 25, Public Law 90-454 in the 90th Congress. Reported in House from Merchant Marine and Fisheries November 28, 1967; H.R. Rept. No. 989. Passed House February 8, 1968. Reported in Senate from Commerce July 17, 1968; S. Rept. No. 1419. Passed Senate, amended, July 19, 1968. House agrees to Senate amendment July 22, 1968.

PUBLIC WORKS FOR WATER AND POWER RESOURCES DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1969

[Extracts from] An act making appropriations for public works for water and power resources development, including certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, Interstate Commission on the Potomac River Basin, the Tennessee Valley Authority, and the Water Resources Council, and the Atomic Energy Commission, for the fiscal year ending June 30, 1969, and for other purposes. (Act of August 12, 1968, Public Law 90-479, 82 Stat. 705)

* * * * *

TITLE II—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Washoe Project water service on national forest lands nonreimbursable.]—*Provided further,* That of the amount appropriated herein for the Washoe Project, not to exceed $600,000, representing the cost of providing water service on national forest lands under the administration of the United States Forest Service, shall be nonreimbursable. (82 Stat. 709)

* * * * *

ALASKA POWER ADMINISTRATION

GENERAL INVESTIGATIONS

For engineering and economic investigations to promote the development and utilization of the water, power and related resources of Alaska, $600,000, to remain available until expended: (82 Stat. 712)

EXPLANATORY NOTES

Alaska Power Administration. The Alaska Power Administration was created by the Secretary of the Interior in 1967 to operate and to market power from the Eklutna, Snettisham and other Army Projects in Alaska and to conduct power and resource studies under Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890) and other laws.

Provision Repeated. An appropriation to the Alaska Power Administration for investigations in excess of the $250,000 authorized by the Act of August 9, 1955, is contained in each subsequent annual appropriation act through the Act of August 7, 1977. There-

after, the appropriations for general investigations and operation and maintenance for the Alaska Power Administration within the Department of Energy were merged into one account.

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Resources Development and Atomic Energy Commission Appropriation Act, 1969".

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted 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. 17903, Public Law 90-479 in the 90th Congress. H.R. Rept. No. 1549. S. Rept. No. 1405. H.R. Rept. No. 1788 (conference report).

FLOOD CONTROL ACT OF 1968

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. (Act of August 13, 1968, Public Law 90-483, 82 Stat. 731)

* * * * *

TITLE II—FLOOD CONTROL

* * * * *

Sec. 203. [Projects authorized.]—

* * * * *

MISSOURI RIVER BASIN

The second paragraph under the heading "Missouri River Basin" of the Act entitled "An Act authorizing additional appropriations for the prosecution of comprehensive plans for certain river basins", approved December 30, 1963 (77 Stat. 840), is hereby amended to read as follows:

"The comprehensive plan for flood control and other purposes in the Missouri River Basin, authorized by the Flood Control Act of June 28, 1938, as amended and supplemented, is further modified to include such bank protection or rectification works at or below the Garrison Reservoir as in the discretion of the Chief of Engineers and the Secretary of the Army may be found necessary, at an estimated cost of $7,040,000." (82 Stat. 743)

JORDAN RIVER BASIN

The project for the Little Dell Dam and Reservoir, Salt Lake City Streams, Utah, is hereby modified, substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 53, Ninetieth Congress, at an estimated cost of $22,664,000. (82 Stat. 744)

EXPLANATORY NOTE

Supplementary Provision: Subsequent Modification and Authorization. Section 170 of the Water Resources Development Act of 1976 (Act of October 22, 1976, Public Law 94-587, 90 Stat. 2917) modified the Little Dell project by authorizing a decrease in the amount of storage capacity so as to more adequately reflect existing needs. Extracts from the 1976 Act, not including section 170, appear in Volume IV in chronological order.

* * * * *

Sec. 209. [Federal acquisition of lands for resettlement on behalf of state or local governments.]—(a) Whenever any State, or any agency or

instrumentality of a State or local government, or any nonprofit incorporated body organized or chartered under the law of the State in which it is located, or any nonprofit association or combination of such bodies, agencies or instrumentalities, shall undertake to secure any lands or interests therein as a site for the resettlement of families, individuals, and business concerns displaced by a river and harbor improvement, flood control or other water resource project duly authorized by Congress, and when it has been determined by the Secretary of the Army that the State is unable to acquire necessary lands or interests in lands or is unable to acquire such lands or interests in lands with sufficient promptness, the Secretary, upon the request of the Governor of the State in which such site is located, and after consultation with appropriate Federal, State, interstate, regional, and local departments and agencies, is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation or otherwise in accordance with the laws of the United States (including the Act of February 26, 1931 (46 Stat. 1421). All expenses of said acquisition and any award that may be made under a condemnation proceeding, including costs of examination and abstract of title, certificate of title, appraisal, advertising, and any fees incident to acquisition, shall be paid by such State or body, agency, or instrumentality. The State, agency, instrumentality, or nonprofit body may repay such amounts from any funds made available to it for such purposes by any Federal department, agency, or instrumentality (other than the Department of the Army) having authority to make funds available for such a purpose. Pending such payment, the Secretary may expend from any funds hereafter appropriated for the project occasioning such acquisition such sums as may be necessary to carry out this section. To secure payment, the Secretary may require any such State or agency, body, or instrumentality to execute a proper bond in such amount as he may deem necessary before acquisition is commenced. Any sums paid to the Secretary by any such State or agency, body or instrumentality shall be deposited in the Treasury to the credit of the appropriation for such project.

(b) No acquisition shall be undertaken under the authority of this section unless the Secretary has determined, after consultation with appropriate Federal, State, and local governmental agencies that (1) the development of a site is necessary in order to alleviate hardships to displaced persons; (2) the location of the site is suitable for development in relation to present or potential sources of employment; and (3) a plan for development of the site has been approved by appropriate local governmental authorities in the area or community in which such site is located.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any lands or interests in land acquired in any State under the provisions of this section, to the State, or such public or private nonprofit body, agency, or institution in the State as the Governor may prescribe, upon such terms and conditions as may be agreed upon by the Secretary, the Governor, and the agency to which the conveyance is to be made.

EXPLANATORY NOTE

Reference in the Text. The Act of February 26, 1931 (46 Stat. 1421), referred to in the text, enables the United States to take possession and title of construction sites in advance of final judgment in eminent domain proceedings. The 1931 Act is codified at 40 U.S.C. §§ 258a through 258e. It appears in Volume III, Appendix, at page 1974 and in the new Appendix in Supplement I.

Sec. 210. [Prohibition against entrance or admission fees at recreation areas located at Corps reservoirs.]—No entrance or admission fees shall be collected after March 31, 1970, by any officer or employee of the United States at public recreation areas located at lakes and reservoirs under the jurisdiction of the Corps of Engineers, United States Army. User fees at these lakes and reservoirs shall be collected by officers and employees of the United States only from users of highly developed facilities requiring continuous presence of personnel for maintenance and supervision of the facilities, and shall not be collected for access to or use of water areas, undeveloped or lightly developed shoreland, picnic grounds, overlook sites, scenic drives, or boat launching ramps where no mechanical or hydraulic equipment is provided. (82 Stat. 746)

* * * * *

Sec. 220. Title II of this Act may be cited as the "Flood Control Act of 1968". (82 Stat. 750)

EXPLANATORY NOTES

Not Codified. The extracts from this act included herein are not codified in the U.S. Code.

Legislative History. S. 3710, Public Law 90-483 in the 90th Congress. Reported in Senate from Public Works; S. Rept. No. 1342. Passed Senate July 2, 1968. Reported in House from Public Works; H.R. Rept. No. 1709. Passed House, amended, July 15, 1968. Conference report: H.R. Rept. No. 1819. Senate agrees to conference report July 31, 1968. House agrees to conference report August 1, 1968.

MOUNTAIN PARK PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the Mountain Park reclamation project, Oklahoma, and for other purposes. (Act of September 21, 1968, Public Law 90-503, 82 Stat. 853)

[Sec. 1. Mountain park project authorized.]—The Secretary of the Interior is authorized to construct, operate, and maintain the Mountain Park reclamation project, Oklahoma, under the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) for the principal purposes of storing, regulating, and furnishing water for municipal, domestic, and industrial uses, conserving and developing fish and wildlife resources, providing outdoor recreation opportunities, and controlling floods. The principal features of the project shall consist of a dam and reservoir on Otter Creek, a diversion dam on Elk Creek, a canal from the diversion dam to a storage reservoir on Otter Creek, aqueducts from the storage reservoir to the cities of Altus, Snyder, and Frederick, Oklahoma, a wildlife management area, and basic public outdoor recreation facilities. Construction of the project may be undertaken in such units or stages as in the determination of the Secretary will best serve project requirements and meet water needs. (82 Stat. 853; Act of October 27, 1974, 88 Stat. 1486)

EXPLANATORY NOTE

1974 Amendment. Section 301 of the Reclamation Development Act of 1974 (Act of October 27, 1974, 88 Stat. 1486) amended section 1 by substituting the words "Altus, Snyder, and Frederick, Oklahoma" for "Altus and Snyder, Oklahoma", thereby providing for a water supply for the city of Frederick, Oklahoma. The 1974 Act appears in Volume IV in chronological order.

Sec. 2. (a) [Repayment period.]—Costs of the project, or any unit or stage thereof, allocated to municipal water supply, shall be repayable, with interest, by the municipal water users over a period of not more than fifty years from the date that water is first delivered for that purpose, pursuant to contracts with municipal corporations or other organizations, as defined in section 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187). Such contracts shall be precedent to the commencement of construction of any unit or stage of the project. The contracting organization shall be responsible for the disposal and sale of water surplus to its requirements, but revenues therefrom shall be used only for payment of operation and maintenance costs, interest, and retirement of the obligation assumed in the contract. Contracts may be entered into with water users' organizations pursuant to the provisions of this Act without regard to the last sentence of subsection 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1187).

(b) [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the costs of the project

allocated to municipal water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue, and by adjusting such interest rate to the nearest multiple of one-eighth of 1 per centum if the computed average interest rate is not a multiple of one-eighth of 1 per centum. (82 Stat. 853)

EXPLANATORY NOTES

Reference in the Text. Section 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in the text, defines "organizations" as "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." Section 2(g) of the 1939 Act appears in Volume I at page 635.

Reference in the Text. The last sentence of subsection (c) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in the text, reads: "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." The sentence appears in Volume I at page 648.

Sec. 3. [Transfer of project works—Credit—Obligation of water users' organization.]—The Secretary is authorized to transfer to a water users' organization the care, operation, and maintenance of the project works, and, if such transfer is made to credit annually against the organization's repayment obligation that portion of the year's operation and maintenance costs which, if the United States had continued to operate the project, would have been allocated to flood control, fish and wildlife, and recreation purposes. Prior to assuming care, operation, and maintenance of the project works the water users' organization shall obligate itself to operate them in accordance with regulations prescribed by the Secretary of the Army with respect to flood control, and by the Secretary of the Interior with respect to fish and wildlife and recreation. Upon complete payment of the obligation assumed, the water users' organization, its designee or designees, shall be conveyed title to such portions of the aqueducts and related facilities as are used solely for delivering project water to water users, and shall have a permanent right to use that portion of project reservoir capacity which is or may be allocated to municipal and industrial water supply purposes by the Secretary of the Interior, so long as the space designated for those purposes may be physically available, taking into account such equitable reallocation of reservoir storage capacities among the purposes to be served by the project as may be necessary due to sedimentation, subject, if the project is then operated by the United States, to payment to the United States of a reasonable annual charge to cover operation and maintenance costs and a fair share of administrative costs applicable to the project. (82 Stat. 854)

Sec. 4. [Soil survey and land classification requirements waived.]—Expenditures for the Mountain Park project may be made without regard

to the soil survey and land classification requirements of the Interior Department Appropriation Act of 1954 (67 Stat. 266). (82 Stat. 854)

EXPLANATORY NOTE

Reference in the Text. The soil survey and land classification requirements of the Interior Department Appropriation Act of 1954 (67 Stat. 266), referred to in the text, provide that no appropriation shall be available for the construction of any project or any feature of a project until the Secretary certifies that an adequate soil survey and land classification has been made. Extracts from the 1954 Act, including the requirements referred to in the text, appear in Volume II at page 1115.

Sec. 5. [Fish and wildlife development—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Mountain Park reclamation project shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213). (82 Stat. 854)

Sec. 6. [Appropriation authorization]—There is hereby authorized to be appropriated for constuction of the Mountain Park Reclamation Project the sum of $19,978,000 (January 1965 prices), plus or minus such amounts, if any, as may be justrified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for the operation and maintenance of the project. (82 Stat. 854)

EXPLANATORY NOTES

Codification Omitted. This Act originally was codified at 43 U.S.C. §§ 616aaaa to 616ffff but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Supplementary Provision: Appropriation Increase. In addition to the $19,978,000 appropriation authorized by section 6, an appropriation increase of $6,057,000 was authorized by section 302 of the Reclamation Development Act of 1974 (Act of October 27, 1974, 88 Stat. 1486). The 1974 Act appears in Volume IV in chronological order.

Legislative History. H.R. 9362, Public Law 90-503 in the 90th Congress. Reported in House from Interior and Insular Affairs July 2, 1968; H.R. Rept. No. 1611. Passed House July 15, 1968. Reported in Senate from Interior and Insular Affairs September 11, 1968; S. Rept. No. 1533. Passed Senate September 12, 1968.

NATIONAL WATER COMMISSION ACT

An act to provide for a comprehensive review of national water resource problems and programs, and for other purposes (Act of September 26, 1968, Public Law 90-515, 82 Stat. 868)

[Sec. 1. Short title.]—This Act may be cited as the "National Water Commission Act". (82 Stat. 868; 42 U.S.C. § 1962a note)

THE NATIONAL WATER COMMISSION

Sec. 2. (a) There is established the National Water Commission (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of seven members who shall be appointed by the President and serve at his pleasure. No member of the Commission shall, during his period of service on the Commission, hold any other position as an officer or employee of the United States, except as a retired officer or retired civilian employee of the United States.

(c) The President shall designate a Chairman of the Commission (hereinafter referred to as the "Chairman") from among its members.

(d) Members of the Commission may each be compensated at the rate of $100 for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C., sec. 5703, for persons in the Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed by the Chairman with the approval of the Commission and shall be compensated at the rate determined by the U.S. Civil Service Commissioners. The Executive Director shall have such duties and responsibilities as the Chairman may assign. (82 Stat. 868, 42 U.S.C. § 1962a note)

DUTIES OF THE COMMISSION

Sec. 3. (a)The Commission shall (1) review present and anticipated national water resource problems, making such projections of water requirements as may be necessary and identifying alternative ways of meeting these requirements—giving consideration, among other things, to conservation and more efficient use of existing supplies, increased usability by reduction of pollution, innovations to encourage the highest economic use of water, interbasin transfers, and technological advances including, but not limited to, desalting, weather modification, and waste water purification and reuse; (2) consider economic and social consequences of water resource development, including, for example, the impact of water resource development on regional economic growth, on institutional arrangements, and on esthetic values affecting the quality of life of the American people; and (3)

advise on such specific water resource matters as may be referred to it by the President and the Water Resources Council.

(b) The Commission shall consult with the Water Resources Council regarding its studies and shall furnish its proposed reports and recommendations to the Council for review and comment. The Commission shall submit simultaneously to the President and to the United States Congress such interim and final reports as it deems appropriate, and the Council shall submit simultaneously to the President and to the United States Congress its views on the Commission's reports. The President shall transmit the Commission's final report to the Congress, together with such comments and recommendations for legislation as he deems appropriate.

(c) The Commission shall terminate not later than five years from the effective date of this Act. (82 Stat. 868; 42 U.S.C. § 1962a note)

POWERS OF THE COMMISSION

Sec. 4. (a) The Commission may (1) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it may deem advisable; (2) acquire, furnish, and equip such office space as is necessary; (3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; (4) without regard to the civil service laws and regulations and without regard to 5 U.S.C., ch. 51, employ and fix the compensation of such personnel as may be necessary to carry out the functions of the Commission; (5) procure services as authorized by 5 U.S.C., sec. 3109, at rates not to exceed $100 per diem for individuals; (6) purchase, hire, operate, and maintain passenger motor vehicles; (7) enter into contracts or agreements for studies and surveys with public and private organizations and transfer funds to Federal agencies and river basin commissions created pursuant to title II of the Water Resources Planning Act to carry out such aspects of the Commission's functions as the Commission determines can best be carried out in that manner; and (8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this title.

(b) Any member of the Commission is authorized to administer oaths when it is determined by a majority of the Commission that testimony shall be taken or evidence received under oath. (82 Stat. 869; 42 U.S.C. § 1962a note)

POWERS AND DUTIES OF THE CHAIRMAN

Sec. 5. (a) Subject to general policies adopted by the Commission, the Chairman shall be the chief executive of the Commission and shall exercise its executive and administrative powers as set forth in section 4(a) (2) through section 4(a) (8).

(b) The Chairman may make such provision as he shall deem appropriate authorizing the performance of any of his executive and administrative functions by the Executive Director or other personnel of the Commission. (82 Stat. 869; 42 U.S.C. § 1962a note)

OTHER FEDERAL AGENCIES

Sec. 6. (a) The Commission may, to the extent practicable, utilize the services of the Federal water resource agencies.

(b) Upon request of the Commission, the head of any Federal department or agency or river basin commission created pursuant to title II of the Water Resources Planning Act is authorized (1) to furnish to the Commission, to the extent permitted by law and within the limits of available funds, including funds transferred for that purpose pursuant to section 4 (a) (7) of this Act, such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with this Commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(c) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services: *Provided,* That the regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C., sec. 5514) shall apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of said Administrator for the administrative control of funds (31 U.S.C. 665 (g)) shall apply to appropriations of the Commission: *And provided further,* That the Commission shall not be required to prescribe such regulations. (82 Stat. 869; 42 U.S.C. § 1962a note)

APPROPRIATIONS

Sec. 7. There are hereby authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this Act. (82 Stat. 869; 42 U.S.C. § 1962a note)

EXPLANATORY NOTE

Legislative History. S. 20, Public Law 90-515 in the 90th Congress. Reported in Senate from Interior and Insular Affairs February 2, 1967; S. Rept. No. 25. Passed Senate February 6, 1967. Reported in House from Interior and Insular Affairs June 21, 1967; H.R. Rept. No. 376. Passed House, amended, July 12, 1967. Senate asks for a conference June 13, 1968. House agrees to a conference July 17, 1968. Conference report filed September 4, 1968; H.R. Rept. No. 1862. House agrees to conference report September 5, 1968. Senate agrees to conference report September 12, 1968.

REHABILITATION OF EKLUTNA PROJECT

An act to provide for the rehabilitation of the Eklutna project, Alaska, and for other purposes. (Act of September 26, 1968, Public Law 90-523, 82 Stat. 875)

[Sec. 1. Rehabilitation of Eklutna project—Limit on nonreimbursable costs.]—The total sums expended by the Secretary of the Interior in rehabilitation of the Eklutna project, Alaska, from damage caused by the earthquake of March 27, 1964, less the difference between the actual cost of the new dam and the estimated cost of rehabilitating the old dam, shall be nonreimbursable and nonreturnable, and not subject to the provisions of the second sentence of section 1 of the Act of July 31, 1950, as amended: *Provided, however,* That the nonreimbursable and nonreturnable expenditures shall not exceed $2,805,437. (82 Stat. 875)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The second sentence of section 1 of the Act of July 31, 1950 (64 Stat. 382), as amended, referred to in the text, reads: "The capital investment properly allocable to each unit of said project, as determined by the Federal Power Commission, shall be amortized over a reasonable period of years, and interest shall be charged on the unamortized balance of the full capital investment in said project at a rate of 2½ per centum per annum and shall be covered into the Treasury of the United States to the credit of miscellaneous receipts." The sentence appears in Volume II at page 1010.

Legislative History. S. 224, Public Law 90-523 in the 90th Congress. Reported in Senate from Interior and Insular Affairs May 27, 1968; S. Rept. No. 1147. Passed Senate May 28, 1968. Reported in House from Interior and Insular Affairs September 4, 1968; H.R. Rept. No. 1852. Passed House September 16, 1968.

COLORADO RIVER BASIN PROJECT ACT

An act to authorize the construction, operation, and maintenance of the Colorado River Basin project, and for other purposes. (Act of September 30, 1968, Public Law 90-537, 82 Stat. 885.)

TITLE I—COLORADO RIVER BASIN PROJECT: OBJECTIVES

Sec. 101. [Short title.]—This Act may be cited as the "Colorado River Basin Project Act". (82 Stat. 885; 43 U.S.C. § 1501 note)

Sec. 102. (a)[Purposes.]—It is the object of this Act to provide a program for the further comprehensive development of the water resources of the Colorado River Basin and for the provision of additional and adequate water supplies for use in the upper as well as in the lower Colorado River Basin. This program is declared to be for the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and the generation and sale of electrical power as an incident of the foregoing purposes.

NOTE OF OPINION

1. Environmental impact statements

It is reasonable for the Bureau of Reclamation to issue a comprehensive environmental impact statement for the continuing operation of the entire Colorado River Basin Project and not to prepare a site-specific environmental impact statement for the Glen Canyon Dam and Reservoir component of the project, whose impounded waters form Lake Powell. The Colorado River Basin Project Act itself recognizes the comprehensive nature of the project 1) by providing in section 102(a) that the purpose of the Act is the further comprehensive development of the water resources of the Colorado River Basin, and 2) by requiring, in section 602(a), that the Secretary of the Interior promulgate criteria for the storage of and release of water from all of the storage units of the Colorado River Project which include units authorized by the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. There is no proposal for criteria or any other major action under the National Environmental Policy Act which involves the Glen Canyon Project singly. Moreover, the courts have recognized the interrelated and comprehensive development of this water resource project. *Badoni v. Higginson,* 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

(b) [Congressional policy.]—It is the policy of the Congress that the Secretary of the Interior (hereinafter referred to as the "Secretary") shall continue to develop, after consultation with affected States and appropriate Federal agencies, a regional water plan, consistent with the provisions of this Act and with future authorizations, to serve as the framework under which projects in the Colorado River Basin may be coordinated and constructed with proper timing to the end that an adequate supply of water

may be made available for such projects, whether heretofore, herein, or hereafter authorized. (82 Stat. 886; 43 U.S.C. § 1501)

TITLE II—INVESTIGATIONS AND PLANNING

Sec. 201. [Secretary to study future Western water needs—Report required—Limitation.]—Pursuant to the authority set out in the Reclamation Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto, and the provisions of the Water Resources Planning Act of July 22, 1965, 79 Stat. 244, as amended, with respect to the coordination of studies, investigations and assessments, the Secretary of the Interior shall conduct full and complete reconnaissance investigations for the purpose of developing a general plan to meet the future water needs of the Western United States. Such investigations shall include the long-range water supply available and the long-range water requirements in each water resource region of the Western United States. Progress reports in connection with these investigations shall be submitted to the President, the National Water Commission (while it is in existence), the Water Resources Council, and to the Congress every two years. The first of such reports shall be submitted on or before June 30, 1971, and a final reconnaissance report shall be submitted not later than June 30, 1977: *Provided*, That for a period of ten years from the date of enactment of the Reclamation Safety of Dams Act of 1978, any federal official shall not undertake reconnaissance studies of any plan for the importation of water into the Colorado River Basin from any other natural river drainage basin lying outside the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are in the natural drainage basin of the Colorado River. (82 Stat. 886; Act of November 2, 1978, 92 Stat. 2471; Act of October 3, 1980, 94 Stat. 1505; 43 U.S.C. § 1511)

Explanatory Notes

1980 Amendment. Section 10 of the Act of October 3, 1980 (P.L. 96-375, 94 Stat. 1505), amended the fourth sentence of section 201 by striking out the words "the Secretary" and inserting in lieu thereof "any Federal official". The 1980 Act appears in Volume IV in chronological order.

1978 Amendment. Section 10 of the Reclamation Safety of Dams Act of 1978 (Act of November 2, 1978, Public Law 95-578, 92 Stat. 2471) amended the fourth sentence of section 201 by deleting the words "from the date of this Act" following the word "years" and preceding the word "the Secretary" and inserting in lieu thereof the words "from the date of enactment of the Reclamation Safety of Dams Act of 1978" as they appear above. The 1978 Act appears in Volume IV in chronological order.

Note of Opinion

1. Studies of regional transfers

The Secretary may not approve a grant under Title II of the Water Resources Research Act of 1964 to assist in financing a research project, proposed by the Federation of Rocky Mountain States, Inc. in 1971, a principal feature of which is a study of augmenting the water resources of the Colorado River Basin by regional water transfers from Canada. The Act specifically limits financial assistance to research which is "related to the mission of the Department of the Interior." As section 201 of the Colorado River Basin Project Act expressly prohibits the Secretary from un-

dertaking studies for the importation of water into the Colorado River Basin from areas outside certain States during the ten years after its enactment, the proposed project cannot be related to the Department's mission. Solicitor Melich Opinion, M-36830 (June 29, 1971).

Sec. 202. [Requirements of Mexican Water Treaty a national obligation—States relieved of obligations—Limitations.]—The Congress declares that the satisfaction of the requirements of the Mexican Water Treaty from the Colorado River constitutes a national obligation which shall be the first obligation of any water augmentation project planned pursuant to section 201 of this Act and authorized by the Congress. Accordingly, the States of the Upper Division (Colorado, New Mexico, Utah, and Wyoming) and the States of the Lower Division (Arizona, California, and Nevada) shall be relieved from all obligations which may have been imposed upon them by article III(c) of the Colorado River Compact so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to satisfy the requirements of the Mexican Water Treaty together with any losses of water associated with the performance of that treaty: *Provided*, That the satisfaction of the requirements of the Mexican Water Treaty (Treaty Series 994, 59 Stat. 1219), shall be from the waters of the Colorado River pursuant to the treaties, laws, and compacts presently relating thereto, until such time as a feasibility plan showing the most economical means of augmenting the water supply available in the Colorado River below Lee Ferry by two and one-half million acre-feet shall be authorized by the Congress and is in operation as provided in this Act. (82 Stat. 887; 43 U.S.C. § 1512)

EXPLANATORY NOTE

References in the Text. The Mexican Water Treaty of February 3, 1944, referred to in the text, appears in Volume II at page 750. The requirements of the Treaty concerning the Colorado River appear in Volume II at page 759. Article III(c) of the Colorado River Compact, also referred to in the text, appears in Volume I at page 443.

Sec. 203. (a) [Importation of water to Colorado River system—Plans required.]—In the event that the Secretary shall, pursuant to section 201, plan works to import water into the Colorado River system from sources outside the natural drainage areas of the system, he shall make provision for adequate and equitable protection of the interests of the States and areas of origin, including assistance from funds specified in this Act, to the end that water supplies may be available for use in such States and areas of origin adequate to satisfy their ultimate requirements at prices to users not adversely affected by the exportation of water to the Colorado River system.

(b) [Priority of rights to use of exported water.]—All requirements, present or future, for water within any State lying wholly or in part within the drainage area of any river basin from which water is exported by works planned pursuant to this Act shall have a priority of right in perpetuity to the use of the waters of that river basin, for all purposes, as against the uses of the water delivered by means of such exportation works, unless

otherwise provided by interstate agreement. (82 Stat. 887; 43 U.S.C. § 1513)

Sec. 204. [Appropriation authorization.]—There are hereby authorized to be appropriated such sums as are required to carry out the purposes of this title. (82 Stat. 887; 43 U.S.C. § 1514)

TITLE III—AUTHORIZED UNITS: PROTECTION OF EXISTING USES

Sec. 301. (a) [Central Arizona Project authorized—Features—Limitations.]—For the purposes of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central Arizona Project, consisting of the following principal works: (1) a system of main conduits and canals, including a main canal and pumping plants (Granite Reef aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to Orme Dam or suitable alternative, which system may have a capacity of 3,000 cubic feet per second or whatever lesser capacity is found to be feasible: *Provided*, That any capacity in the Granite Reef aqueduct in excess of 2,500 cubic feet per second shall be utilized for the conveyance of Colorado River water only when Lake Powell is full or releases of water are made from Lake Powell to prevent the reservoir from exceeding elevation 3,700 feet above mean sea level or when releases are made pursuant to the proviso in section 602(a) (3) of this Act: *Provided further*, That the costs of providing any capacity in excess of 2,500 cubic feet per second shall be repaid by those funds available to Arizona pursuant to the provision of subsection 403(f) of this Act, or by funds from sources other than the development fund; (2) Orme Dam and Reservoir and power-pumping plant or suitable alternative; (3) Buttes Dam and Reservoir, which shall be so operated as not to prejudice the rights of any user in and to the waters of the Gila River as those rights are set forth in the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59); (4) Hooker Dam and Reservoir or suitable alternative, which shall be constructed in such a manner as to give effect to the provisions of subsection (f) of section 304; (5) Charleston Dam and Reservoir; (6) Tucson aqueducts and pumping plants; (7) Salt-Gila aqueducts; (8) related canals, regulating facilities, hydroelectric powerplants, and electrical transmission facilities required for the operation of said principal works; (9) related water distribution and drainage works; and (10) appurtenant works.

NOTES OF OPINIONS

Distribution and drainage systems 1
Indian preference clause 2
Lake Powell, Rainbow Bridge 3
Orme Dam 4-8
Alternatives 4
Cost ceiling 5

Fort McDowell Indian Reservation 6
Relationship with other laws 9-13
Federal Water Project Recreation Act 9
Transmission facilities 14
Tucson Aqueducts 15

1. Distribution and drainage systems

Since section 301(a) of the Colorado River Basin Project Act authorizes the Secretary to construct "related water distribution and drainage works" and the legislative history of that Act demonstrates that Congress intended to give the Secretary flexibility in choosing the program under which non-Indian distribution and drainage systems for the Central Arizona Project would be financed and constructed, those systems may be financed and constructed pursuant to repayment contracts under section 9(d) of the Reclamation Project Act of 1939 as well as loan contracts under the Distribution System Loans Act. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

2. Indian preference clause

Section 7(b) of the Indian Self-Determination Act of 1975, 25 U.S.C. § 450e(b), does not require the Secretary to include a clause requiring Indian preference in training and employment and awarding of subcontracts in a contract for the construction of a pumping plant on the Granite Reef Aqueduct. Regulations implementing that Act require the preference clause to be included in contracts authorized by acts "other" than the Self-Determination Act where such contracts are specifically "for the benefit of Indians." Accordingly, the clause is not required in contracts such as this, which is only for the purpose of pumping water down the mainstem of the project and cannot be said to have any *specific* intended beneficiary. It would be unreasonable to conclude that all contracts entered into pursuant to the CAP authorizing act are specifically for the benefit of Indians merely because Indians will receive water from the project. A more reasonable interpretation is that the clause must be included only in contracts whose specific purpose is to benefit Indians, e.g., contracts to construct the Indian distribution facilities. Memorandum of Assistant Solicitor Mauro to Assistant Solicitor, Procurement, Division of General Law, February 26, 1980.

3. Lake Powell, Rainbow Bridge

Congress has repealed the last sentence of section 3 of the Colorado River Storage Project Act and the proviso of section 1(2) of that same Act, both designed to protect the Rainbow Bridge, by (1) disallowing from the Public Works Appropriation Act, 1961, an appropriation to initiate construction of facilities to protect Rainbow Bridge National Monument after specifically finding that the impoundment of water in Glen Canyon Reservoir would not result in any structural damage to the bridge, and (2) by including in the 1961 Appropriations Act and all subsequent public works appropriations acts through 1973 a proviso prohibiting the use of funds appropriated for the Upper Colorado River Basin Fund for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument. Nor can a court order that the Glen Canyon Dam be operated at a reduced level so that the lake would not exceed the level at which it reaches the outer boundary of the monument, as this would have the effect of placing the Glen Canyon facilities, as related to others in the overall system, at about one-half design capacity. To so radically change the effectiveness of the principal regulating reservoir would prevent the attainment of the objectives of the Colorado River Compacts, the Colorado River Storage Project Act and the Colorado River Basin Project Act. *Friends of the Earth v. Armstrong*, 485 F.2d 1 (10th Cir. 1974), cert. denied, 414 U.S. 1171 (1974); accord, *Badoni v. Higginson*, 455 F. Supp. 641 (D. Utah 1977), aff'd, 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

4. Orme Dam—Alternatives

The authorization of the "Orme Dam . . . or suitable alternative" as part of the Central Arizona Project in section 301(a)(2) of the Colorado River Basin Project Act gives the Secretary wide discretion in selecting a site and does not require that an alternative accomplish the same results as if the Orme Dam had been constructed as specified in Chapter IV of the 1964 project Supplemental Information Report. The Secretarial decision must, however, be consistent with the stated Congressional purposes, including flood control, regulatory storage, recreation, and fish and wildlife conservation, and any alternative which provided for only one of these purposes would not be authorized. But nothing in the Act or legislative history indicates that the authorization of a "suitable alternative" precludes the selection of a singular, multiple-site or non-structural alternative such as the proposed Confluence Dam, which would inun-

date more lands than contemplated by the 1964 report. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

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

5. Cost ceiling

Although section 301(a)(2) of the Colorado River Basin Project Act authorizes the "Orme Dam . . . or suitable alternative," and while the individual project features set forth in the legislative history are not inflexible, the history does demonstrate that Congress viewed the total dollar amount of the Central Arizona Project as being the sum of the individual costs of each of its various features, including that of the Orme Dam. Consequently, if the indexed cost of an alternative would significantly increase the cost of this project feature beyond that originally contemplated by Congress, Congress should be so informed and additional appropriations authority requested. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

6. Fort McDowell Indian Reservation

In selecting a "suitable alternative" to the Orme Dam, as authorized by section 301(a)(2) of the Colorado River Basin Project Act, it is clear that the total area of the Fort McDowell Indian Reservation that Chapter IV of the January 1964 Supplemental Information Report on the Central Arizona Project expected to be flooded if the Dam was built as proposed was not intended to establish a ceiling on the acreage permitted to be inundated by an alternative. Rather, the Act expressly gives the Secretary authority to acquire such reservation lands as he deems necessary and permits the use of eminent domain, if needed for their acquisition. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

9. Relationship with other laws—Federal Water Project Recreation Act

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

14. Transmission facilities

To the extent that electrical transmission facilities are required to accomplish Central Arizona Project purposes and not power marketing purposes, the Secretary continues to have the authority to construct, operate, and maintain these facilities and such authority is unaffected by Section 302 of the Department of Energy Organization Act. Memorandum of Solicitor Krulitz to Assistant Secretary, Land and Water Resources, and Commissioner, September 24, 1979.

15. Tucson Aqueducts

The Secretary has authority to specify the terminus and capacity of the Tucson Aqueduct/Colorado River source (Colorado Aqueduct) as the Act itself does not do so, nor does it incorporate by reference any reports which do so. Memorandum of Associate Solicitor Little to Assistant Secretary, Land and Water Resources, July 21, 1980, in re Central Arizona Project.

In the event that the Charleston Dam and Reservoir and the Tucson Aqueduct/San Pedro source (San Pedro Aqueduct) are deleted from the Tucson Division, Central Arizona Project, costs allocated to these two components cannot be used to offset the increased costs of an enlarged Colorado Aqueduct unless it is determined that a portion of the cost of those two components will serve the same project purposes as the revised Colorado Aqueduct, i.e., delivery of a supplemental water supply to the Tucson metropolitan area. The Secretary should specifically notify Congress of this cost ceiling adjustment. Memorandum of Associate Solicitor Little to Assistant Secretary, Land and Water Resources, July 21, 1980.

Where Congress specifically designates in authorizing legislation the features to be a part of the total project, the Secretary may

not substantially deviate from those general requirements without Congressional approval. Thus, as the act specifically lists the Charleston Dam and Reservoir as a principal work and the legislative history refers to the San Pedro Aqueduct as a "major project feature," these project components cannot be deleted without Congressional approval. Memorandum of Associate Solicitor Little to Assistant Secretary, Land and Water Resources, July 21, 1980, in re Central Arizona Project: Tucson Aqueduct.

(b) [Limitation on Central Arizona Project diversions—Priority of water users unaffected.]—Article II(B)(3) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340) shall be so administered that in any year in which, as determined by the Secretary, there is insufficient main stream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada, diversions from the main stream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works heretofore constructed, and by other existing Federal reservations in that State, of four million four hundred thousand acre-feet of mainstream water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of this subsection 301(b). This subsection shall not affect the relative priorities, among themselves, of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project, or amend any provisions of said decree.

(c) [Limitation not to apply if sufficient mainstream water available.]—The limitation stated in subsection (b) of this section shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient mainstream water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada. (82 Stat. 887; 43 U.S.C. § 1521)

Sec. 302. (a) [Acquisition of Indian lands for Orme Dam and Reservoir—Compensation.]—The Secretary shall designate the lands of the Salt River Pima-Maricopa Indian Community, Arizona, and the Fort McDowell-Apache Indian Community, Arizona, or interests therein, and any allotted lands or interests therein within said communities which he determines are necessary for use and occupancy by the United States for the construction, operation, and maintenance of Orme Dam and Reservoir, or alternative. The Secretary shall offer to pay the fair market value of the lands and interests designated, inclusive of improvements. In addition, the Secretary shall offer to pay toward the cost of relocating or replacing such improvements not to exceed $500,000 in the aggregate, and the amount offered for the actual relocation or replacement of a residence shall not exceed the difference between the fair market value of the residence and $8,000. Each

community and each affected allottee shall have six months in which to accept or reject the Secretary's offer. If the Secretary's offer is rejected, the United States may proceed to acquire the property interests involved through eminent domain proceedings in the United States District Court for the District of Arizona under 40 U.S.C., sections 257 and 258a. Upon acceptance in writing of the Secretary's offer, or upon the filing of a declaration of taking in eminent domain proceedings, title to the lands or interests involved, and the right to possession thereof, shall vest in the United States. Upon a determination by the Secretary that all or any part of such lands or interests are no longer necessary for the purpose for which acquired, title to such lands or interests shall be restored to the appropriate community upon repayment to the Federal Government of the amounts paid by it for such lands.

(b) [Title to acquired land subject to use or lease by former owner—Conditions.]—Title to any land or easement acquired pursuant to this section shall be subject to the right of the former owner to use or lease the land for purposes not inconsistent with the construction, operation, and maintenance of the project, as determined by, and under terms and conditions prescribed by, the Secretary. Such right shall include the right to extract and dispose of minerals. The determination of fair market value under subsection (a) shall reflect the right to extract and dispose of minerals and all other uses permitted by this section.

(c) [Addition of lands to Fort McDowell Indian Reservation.]—In view of the fact that a substantial portion of the lands of the Fort McDowell Mohave-Apache Indian Community will be required for Orme Dam and Reservoir, or alternative, the Secretary shall, in addition to the compensation provided for in subsection (a) of this section, designate and add to the Fort McDowell Indian Reservation twenty-five hundred acres of suitable lands in the vicinity of the reservation that are under the jurisdiction of the Department of the Interior in township 4 north, range 7 east; township 5 north, range 7 east; and township 3 north, range 7 east, Gila and Salt River base meridian, Arizona. Title to lands so added to the reservation shall be held by the United States in trust for the Fort McDowell Mohave-Apache Indian Community.

(d) [Development and operation of recreational facilities—Master plan.]—Each community shall have a right, in accordance with plans approved by the Secretary, to develop and operate recreational facilities along the part of the shoreline of the Orme Reservoir located on or adjacent to its reservation, including land added to the Fort McDowell Reservation as provided in subsection (b) of this section, subject to rules and regulations prescribed by the Secretary governing the recreation development of the reservoir. Recreation development of the entire reservoir and federally owned lands under the jurisdiction of the Secretary adjacent thereto shall be in accordance with a master recreation plan approved by the Secretary. The members of each community shall have nonexclusive personal rights to hunt and fish on or in the reservoir without charge to the same extent they are now authorized to hunt and fish, but no community shall have the

right to exclude others from the reservoir except by control of access through its reservation or any right to require payment by members of the public except for the use of community lands or facilities.

(e) [Exemption from income taxes.]—All funds paid pursuant to this section, and any per capita distribution thereof, shall be exempt from all forms of State and Federal income taxes. (82 Stat. 888; 43 U.S.C. § 1522)

EXPLANATORY NOTE

References in the Text. Sections 257 and 258a of Title 40, United States Code, referred to in subsection (a) of the text, provide for the taking of realty for public use. The sections appear in Volume III, Appendix, at page 1974 and in the new Appendix in Supplement I.

NOTE OF OPINION

1. Orme Dam

In selecting a "suitable alternative" to the Orme Dam, as authorized by section 301(a)(2) of the Colorado River Basin Project Act, it is clear that the total area of the Fort McDowell Indian Reservation that Chapter IV of the January 1964 Supplemental Information Report on the Central Arizona Project expected to be flooded if the Dam was built as proposed was not intended to establish a ceiling on the acreage permitted to be inundated by an alternative. Rather, the Act expressly gives the Secretary authority to acquire such reservation lands as he deems necessary and permits the use of eminent domain, if needed for their acquisition. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

Sec. 303. (a) [Hydroelectric study authorized—Limitations.]—The Secretary is authorized and directed to continue to a conclusion appropriate engineering and economic studies and to recommend the most feasible plan for the construction and operation of hydroelectric generating and transmission facilities, the purchase of electrical energy, the purchase of entitlement to electrical plant capacity, or any combination thereof, including participation, operation, or construction by non-Federal entities, for the purpose of supplying the power requirements of the Central Arizona Project and augmenting the Lower Colorado River Basin Development Fund: *Provided,* That nothing in this section or in this Act contained shall be construed to authorize the study or construction of any dams on the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam.

(b) [Thermal generating powerplants—Provisions of agreements.]—If included as a part of the recommended plan, the Secretary may enter into agreements with non-Federal interests proposing to construct thermal generating powerplants whereby the United States shall acquire the right to such portions of their capacity, including delivery of power and energy over appurtenant transmission facilities to mutually agreed upon delivery points, as he determines is required in connection with the operation of the Central Arizona Project. When not required for the Central Arizona Project, the power and energy acquired by such agreements may be disposed of intermittently by the Secretary for other purposes at such prices as he may determine, including its marketing in conjunction with the sale of power and energy from Federal powerplants in the Colorado River system so as to produce the greatest practicable amount of power and energy that can

be sold at firm power and energy rates. The agreements shall provide, among other things, that—

(1) the United States shall pay not more than that portion of the total construction cost, exclusive of interest during construction, of the powerplants, and of any switchyards and transmission facilities serving the United States, as is represented by the ratios of the respective capacities to be provided for the United States therein to the total capacities of such facilities. The Secretary shall make the Federal portion of such costs available to the non-Federal interests during the construction period, including the period of preparation of designs and specifications, in such installments as will facilitate a timely construction schedule, but no funds other than for preconstruction activities shall be made available by the Secretary until he determines that adequate contractual arrangements have been entered into between all the affected parties covering land, water, fuel supplies, power (its availability and use), rights-of-way, transmission facilities and all other necessary matters for the thermal generating powerplants;

(2) annual operation and maintenance costs shall be apportioned between the United States and the non-Federal interests on an equitable basis taking into account the ratios determined in accordance with the foregoing clause (1): *Provided, however,* That the United States shall share on the foregoing basis in the depreciation component of such costs only to the extent of provision for depreciation on replacements financed by the non-Federal interests;

(3) the United States shall be given appropriate credit for any interests in Federal lands administered by the Department of the Interior that are made available for the powerplants and appurtenances;

(4) costs to be borne by the United States under clauses (1) and (2) shall not include (a) interest and interest during construction, (b) financing charges, (c) franchise fees, and (d) such other costs as shall be specified in the agreement.

(c) [Submission of plan to Congress.]—No later than one year from the effective date of this Act, the Secretary shall submit his recommended plan to the Congress. Except as authorized by subsection (b) of this section, such plan shall not become effective until approved by Congress.

(d) [Conditions if thermal generating plant located in Arizona.]—If any thermal generating plant referred to in subsection (b) of this section is located in Arizona, and if it is served by water diverted from the drainage area of the Colorado River system above Lee Ferry, other provisions of existing law to the contrary notwithstanding, such consumptive use of water shall be a part of the fifty thousand acre-feet per annum apportioned to the State of Arizona by article III(a) of the Upper Colorado River Basin Compact (63 Stat. 31). (82 Stat. 889; 43 U.S.C. § 1523)

EXPLANATORY NOTE

Reference in the Text. Article III(a) of the Upper Colorado River Basin Compact, referred to in subsection (d) of the text, appears in Volume II at page 911.

NOTES OF OPINIONS

Anti-deficiency Act 1
Navajo Project 2
Preference clause 3

1. Anti-deficiency Act

Where Congress expressly authorizes the Secretary to enter into agreements with non-Federal interests to acquire the right to portions of the capacity of new powerplants, sets forth specific conditions for the payment of funds during the construction period, and authorizes appropriations for prepayment of power generation and transmission facilities, the Secretary has authority to obligate the United States in excess of current appropriations and in advance of future appropriations where necessary to obtain thermal generating capacity to provide pumping power for the Central Arizona Project. By singling out for such detailed treatment the agreements for acquiring thermal generating capacity, the Congress recognized the peculiar problems inherent in this feature of the project and manifested its intent to remove these agreements from the restrictions otherwise imposed by the Anti-deficiency Act (31 U.S.C. § 665). Solicitor Melich Opinion, April 18, 1969, in re authority to obligate the United States.

2. Navajo Project

The 34,100 acre-feet a year of Colorado River water to be supplied under a water service contract to the coal-fueled Navajo Project must be charged to the 50,000 acre-feet a year of Upper Basin water that has been apportioned to Arizona by Article III of the Upper Colorado River Basin Compact. The Navajo Tribe may not demand water in excess of the apportionment to satisfy its reserved water rights, as the Tribe has agreed to such water use in the plant site lease, has encouraged the project to go forward, and will realize substantial benefit from the project. Solicitor Melich Opinion, 76 I.D. 357 (December 10, 1969).

3. Preference clause

A request for a preliminary injunction against the continued sale of "interim power" from the Navajo powerplant to a nonpreference customer will be denied where the requesting cities had not made an offer to buy the power at the time the contract was entered into. *City of Anaheim, California v. Kleppe*, 590 F.2d 285 (9th Cir. 1978).

The sale of "interim power" from the coal-fired Navajo plant from the time it begins operation in 1974 until the power is needed for pumping for the Central Arizona Project, estimated to occur in 1980, is governed by the preference clause. The direction in section 303(d) of the Colorado River Basin Project Act to the Secretary to recommend "the most feasible plan" for obtaining pumping power for the Central Arizona Project does not comprehend the right to sell "interim power" in a manner that is in conflict with the preference clause. *Arizona Power Pooling Association v. Morton*, 527 F.2d 721, 725, 728-29 (9th Cir. 1975), cert. denied sub. nom. *Arizona Public Service Co. v. Arizona Power Pooling Association*, 425 U.S. 911 (1976).

The fact that Congress appropriated funds to finance the Federal share of the cost of constructing the coal-fired Navajo plant did not constitute Congressional ratification of an alleged departure from the preference clause in the negotiation of contracts for the sale of "interim power" from the plant. *Arizona Power Pooling Association v. Morton*, 527 F.2d 721, 725-26 (9th Cir. 1975), cert. denied sub. nom. *Arizona Public Service Company v. Arizona Power Pooling Association*, 425 U.S. 911 (1976).

Sec 304. (a) [Limitation on use of water for irrigation.]—Unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas.

(b)(1) [Contracts for irrigation and municipal and industrial water supply in Arizona.]—Irrigation and municipal and industrial water supply under the Central Arizona Project within the State of Arizona may, in the event the Secretary determines that it is necessary to effect repayment, be

pursuant to master contracts with organizations which have power to levy assessments against all taxable real property within their boundaries. The terms and conditions of contracts or other arrangements whereby each such organization makes water from the Central Arizona Project available to users within its boundaries shall be subject to the Secretary's approval, and the United States shall, if the Secretary determines such action is desirable to facilitate carrying out the provisions of this Act, have the right to require that it be a party to such contracts or that contracts subsidiary to the master contracts be entered into between the United States and any user. The provisions of this clause (1) shall not apply to the supplying of water to an Indian tribe for use within the boundaries of an Indian reservation.

(2) [Repayment period.]—Any obligation assumed pursuant to section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) with respect to any project contract unit or irrigation block shall be repaid over a basic period of not more than fifty years; any water service provided pursuant to section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)) may be on the basis of delivery of water for a period of fifty years and for the delivery of such water at an identical price per acre-foot for water of the same class at the several points of delivery from the main canals and conduits and from such other points of delivery as the Secretary may designate; and long-term contracts relating to irrigation water supply shall provide that water made available thereunder may be made available by the Secretary for municipal or industrial purposes if and to the extent that such water is not required by the contractor for irrigation purposes.

(3) [Provisions of municipal and industrial water supply contracts.]—Contracts relating to municipal and industrial water supply under the Central Arizona Project may be made without regard to the limitations of the last sentence of section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); may provide for the delivery of such water at an identical price per acre-foot for water of the same class at the several points of delivery from the main canals and conduits; and may provide for repayment over a period of fifty years if made pursuant to clause (1) of said section and for the delivery of water over a period of fifty years if made pursuant to clause (2) thereof.

Supplementary Provision: Pricing of Irrigation Water Delivered to Lands Under Recordable Contract. Section 218 of the Reclamation Reform Act of 1982 (Act of October 12, 1982, 96 Stat. 1261, 1271, 43 U.S.C. § 390rr) provides that lands receiving irrigation water pursuant to a contract as authorized under the Colorado River Basin Project Act which are placed under recordable contract shall be eligible to receive irrigation water upon terms and conditions related to pricing established by the Secretary pursuant to Reclamation law in effect immediately prior to the date of enactment of the 1982 Act, for a period of time not to exceed 10 years from the date such lands are capable of being served with irrigation water, as determined by the Secretary. The 1982 Act appears in Volume IV in chronological order.

References in the Text. Section 9(d) of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in subsection (b)(2) of the text, requires the execution of a repayment contract prior to water delivery to an irrigation block and provides for a repayment period not exceeding forty years. Section 9(e) of the Reclamation Project Act of 1939, also referred to in subsection (b)(2) of the text,

provides for short- or long-term contracts to furnish irrigation water in lieu of the provisions of section 9(d), for a period not to exceed forty years. The 1939 Act appears in Volume I at page 634.

Reference in the Text. The last sentence of subsection (c) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in subsection 304(b)(3) of the text, reads: "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." The sentence appears in Volume I at page 648.

NOTE OF OPINION

1. Indian tribes, water use priorities

Section 304(b) (1) of the Colorado River Basin Project Act, which states that "The provisions of this clause (1) shall not apply to the supplying of water to an Indian tribe for use within the boundaries of an Indian reservation," does not preclude the United States from establishing priorities for Indians as well as non-Indian lands in a master repayment contract between the United States and the Central Arizona Water Conservation District. The legislative history and the language of the Act itself indicate that the only significance of this sentence is that the ad valorem taxing authority provided in the legislation to assist in repayment of the costs of the Central Arizona Project shall not apply to the supplying of water to Indian lands. While the Act contemplated that Central Arizona Project water would be delivered to Indian lands, it did not accord any priority rights to the Indians but rather granted complete discretion to the Secretary to allocate water for any authorized purpose subject only to limited restrictions not applicable here. Memorandum of Solicitor Melich to Assistant Secretary, Water and Power Resources, November 28, 1972, in re water use priorities in connection with Central Arizona Project.

(c) [Conservation of irrigation water.]—Each contract under which water is provided under the Central Arizona Project shall require that (1) there be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the United States to the contractors shall be provided and maintained with linings adequate in his judgment to prevent excessive conveyance losses; and (3) neither the contractor nor the Secretary shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a contractor receiving water from the Central Arizona Project for any use outside said contractor's service area unless the Secretary and such contractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required. Such contracts shall be subordinate at all times to the satisfaction of all existing contracts between the Secretary and users in Arizona heretofore made pursuant to the Boulder Canyon Project Act (45 Stat. 1057).

(d) [Exchange or replacement of existing water supplies.]—The Secretary may require in any contract under which water is provided from the Central Arizona Project that the contractor agree to accept main stream water in exchange for or in replacement of existing supplies from sources other than the main stream. The Secretary shall so require in the case of users in Arizona who also use water from the Gila River system to the extent necessary to make available to users of water from the Gila River system in New Mexico additional quantities of water as provided in and

under the conditions specified in subsection (f) of this section: *Provided,* That such exchanges and replacements shall be accomplished without economic injury or cost to such Arizona contractors.

(e) [Priority in time of shortage.]—In times of shortage or reduction of main stream Colorado River water for the Central Arizona Project, as determined by the Secretary, users which have yielded water from other sources in exchange for main stream water supplied by that project shall have a first priority to receive main stream water, as against other users supplied by that project which have not so yielded water from other sources, but only in quantities adequate to replace the water so yielded.

NOTE OF OPINION

1. Water use priorities

Aside from the specific priority rights granted by section 304(e) of the Colorado River Basin Project Act, the Secretary has complete discretion to allocate project water for any authorized purpose in such amounts and under such conditions as he deems appropriate. Memorandum of Solicitor Melich to Assistant Secretary, Water and Power Resources, November 28, 1972, in re water use priorities in connection with Central Arizona Project.

(f) (1) [Use of Gila River water—Limitations.]—In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in New Mexico for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of ten consecutive years of eighteen thousand acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340). Such increased consumptive uses shall not begin until, and shall continue only so long as, delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose full consideration shall be given to any differences in the quality of the waters involved.

(2) [Additional use of Gila River water.]—The Secretary shall further offer to contract with water users in New Mexico for water from the Gila River, its tributaries, and underground water sources in amounts that will permit consumptive uses of water in New Mexico of not to exceed an annual average in any period of ten consecutive years of an additional thirty thousand acre-feet, including reservoir evaporation. Such further increases in consumptive use shall not begin until, and shall continue only so long as, works capable of augmenting the water supply of the Colorado River system have been completed and water sufficiently in excess of two million eight hundred thousand acre-feet per annum is available from the main stream of the Colorado River for consumptive use in Arizona to provide water for the exchanges herein authorized and provided. In determining the amount required for this purpose full consideration shall be given to any differences in the quality of the waters involved.

(3) [Use subject to existing rights.]—All additional consumptive uses provided for in clauses (1) and (2) of this subsection shall be subject to all rights in New Mexico and Arizona as established by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59) and to all other rights existing on the effective date of this Act in New Mexico and Arizona to water from the Gila River, its tributaries, and underground water sources, and shall be junior thereto and shall be made only to the extent possible without economic injury or cost to the holders of such rights.

(g) [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the projects authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b) (10) of the Agricultural Adjustment Act of 1938 (52 Stat. 38), as amended (7 U.S.C. 1301), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (82 Stat. 891; 43 U.S.C. § 1524)

EXPLANATORY NOTE

Reference in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in subsection (g) of the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in subsection (g) of the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 305. [Mainstream water cost.]—To the extent that the flow of the main stream of the Colorado River is augmented in order to make sufficient water available for release, as determined by the Secretary pursuant to article II(b)(1) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340), to satisfy annual consumptive use of two million eight hundred thousand acre-feet in Arizona, four million four hundred thousand acre-feet in California, and three hundred thousand acre-feet in Nevada, respectively, the Secretary shall make such water available to users of main stream water in those States at the same costs (to the extent that such costs can be made comparable through the nonreimbursable allocation to the replenishment of the deficiencies occasioned by satisfaction of the Mexican Treaty burden as herein provided and financial assistance from the development fund established by section 403 of this Act) and on the same terms as would be applicable if main stream water were available for release in the quantities required to supply such consumptive use. (82 Stat. 893; 43 U.S.C. § 1525)

Sec. 306. [Water salvage program.]—The Secretary shall undertake programs for water salvage and ground water recovery along and adjacent to the main stream of the Colorado River. Such programs shall be consistent

with maintenance of a reasonable degree of undisturbed habitat for fish and wildlife in the area, as determined by the Secretary. (82 Stat. 893; 43 U.S.C. § 1526)

Sec. 307. [Dixie project reauthorized.]—The Dixie Project, heretofore authorized in the State of Utah, is hereby reauthorized for construction at the site determined feasible by the Secretary, and the Secretary shall integrate such project into the repayment arrangement and participation in the Lower Colorado River Basin Development Fund established by title IV of this Act consistent with the provisions of the Act: *Provided,* That section 8 of Public law 88-565 (78 Stat. 848) is hereby amended by deleting the figure "$42,700,000" and inserting in lieu thereof the figure "$58,000,000". (82 Stat. 893; 43 U.S.C. § 616aa-1)

EXPLANATORY NOTE

Cross Reference, Dixie Project. The Dixie project was initially authorized by the Act of September 2, 1964 (78 Stat. 848) to provide for the development of the Virgin and Santa Clara Rivers to supply irrigation water to approximately 21,000 acres in southwestern Utah. The 1964 Act appears in Volume III at page 1768.

Sec. 308. [Fish and wildlife conservation and development—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the project works authorized pursuant to this title shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213), except as provided in section 302 of this Act. (82 Stat. 893; 43 U.S.C. § 1527)

Sec. 309. [Appropriation authorization.]—(a) There is hereby authorized to be appropriated for construction of the Central Arizona Project, including prepayment for power generation and transmission facilities but exclusive of distribution and drainage facilities for non-Indian lands, $832,180,000 plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein and, in addition thereto, such sums as may be required for operation and maintenance of the project.

NOTES OF OPINIONS

Anti-deficiency Act 1
Orme Dam, cost ceiling 2

1. Anti-deficiency Act

Where Congress expressly authorizes the Secretary to enter into agreements with non-Federal interests to acquire the right to portions of the capacity of new powerplants, sets forth specific conditions for the payment of funds during the construction period, and authorizes appropriations for prepayment of power generation and transmission facilities, the Secretary has authority to obligate the United States in excess of current appropriations and in advance of future appropriations where necessary to obtain thermal generating capacity to provide pumping power for the Central Arizona Project. By singling out for such detailed treatment the agreements for acquiring thermal generating capacity, the Congress recognized the peculiar problems inherent in this feature of the project and manifested its intent to remove these agreements from the restrictions otherwise imposed by the Anti-deficiency Act (31 U.S.C.

§ 665). Solicitor Melich Opinion, April 18, 1969, in re authority to obligate the United States.

2. Orme Dam, cost ceiling

Although section 301(a)(2) of the Colorado River Basin Project Act authorizes the "Orme Dam . . . or suitable alternative," and while the individual project features set forth in the legislative history are not inflexible, the history does demonstrate that Congress viewed the total dollar amount of the Central Arizona Project as being the sum of the individual costs of each of its various features, including that of the Orme Dam. Consequently, if the indexed cost of an alternative would significantly increase the cost of this project feature beyond that originally contemplated by Congress, Congress should be so informed and additional appropriations authority requested. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

(b) There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering and cost indices applicable to the types of construction involved therein from the date of the Colorado River Basin Project Act: *Provided,* That the Secretary shall enter into agreements with non-Federal interests to provide not less than 20 per centum of the total cost of such facilities during the construction of such facilities. Notwithstanding the provisions of section 403 of this Act, neither appropriations made pursuant to the authorization contained in this subsection (b) nor revenues collected in connection with the operation of such facilities shall be credited to the Lower Colorado River Basin Development Fund and payments shall not be made from that fund to the general fund of the Treasury to return any part of the costs of construction, operation, and maintenance of such facilities. (82 Stat. 893; Act of December 20, 1982, 96 Stat. 1817; 43 U.S.C. § 1528)

EXPLANATORY NOTE

1982 Amendment. The Act of December 20, 1982 (Public Law 97-373, 96 Stat. 1817) amended section 309(b) to permit cost indexing of the $100 million authorized to be appropriated for construction of distribution and drainage systems on non-Indian lands and to require the Secretary to enter into agreements with non-Federal interests to provide not less than 20% of the total cost of such facilities during their construction. The 1982 Act appears in Volume IV in chronological order.

NOTES OF OPINIONS

Non-Indian distribution systems 1-5
Appropriations ceiling 1
Indexing 2
Relationship with other laws 6-9
Reclamation Project Act of 1939 6

1. Non-Indian distribution systems—Appropriations ceiling

Applications for loans under the Distribution System Loans Act, 43 U.S.C. § 421a *et seq.*, that individually exceed the total amount authorized to be appropriated by section 309(b) may not be approved if such approval would constitute an obligation to expend funds. Even if approval would constitute only a preliminary action allowing the proposal to move forward through the contracting process, Congress should be asked for additional authority before any action leading to commitment or obligation of funds is taken. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

2.—Indexing

Since Congress explicitly excluded construction of non-Indian distribution and drainage systems from the purposes for which

the indexed general project appropriations were authorized in section 309 (a) and specifically authorized a separate, unindexed appropriation in section 309(b) for construction of those systems, it is clear that the amount authorized to be appropriated for construction of Central Arizona Project non-Indian distribution and drainage systems cannot be indexed. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

6. Relationship with other laws—Reclamation Project Act of 1939

Since section 301(a) of the Colorado River Basin Project Act authorizes the Secretary to construct "related water distribution and drainage works" and the legislative history of that Act demonstrates that Congress intended to give the Secretary flexibility in choosing the program under which non-Indian distribution and drainage systems for the Central Arizona Project would be financed and constructed, those systems may be financed and constructed pursuant to repayment contracts under section 9(d) of the Reclamation Project Act of 1939 as well as loan contracts under the Distribution System Loans Act. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

TITLE IV—LOWER COLORADO RIVER BASIN DEVELOPMENT FUND: ALLOCATION AND REPAYMENT OF COSTS: CONTRACTS

Sec. 401. [Allocation of costs—Certain costs nonreimbursable.]—Upon completion of each lower basin unit of the project herein or hereafter authorized, or separate feature thereof, the Secretary shall allocate the total costs of constructing said unit or features to (1) commercial power, (2) irrigation, (3) municipal and industrial water supply, (4) flood control, (5) navigation, (6) water quality control, (7) recreation, (8) fish and wildlife, (9) the replenishment of the depletion of Colorado River flows available for use in the United States occasioned by performance of the Water Treaty of 1944 with the United Mexican States (Treaty Series 994; 59 Stat. 1219), and (10) any other purposes authorized under the Federal reclamation laws. Costs of construction, operation, and maintenance allocated to the replenishment of the depletion of Colorado River flows available for use in the United States occasioned by compliance with the Mexican Water Treaty (including losses in transit, evaporation from regulatory reservoirs, and regulatory losses at the Mexican boundary, incurred in the transportation, storage, and delivery of water in discharge of the obligations of that treaty) shall be nonreimbursable: *Provided,* That the nonreimbursable allocation shall be made on a pro rata basis to be determined by the ratio between the amount of water required to comply with the Mexican Water Treaty and the total amount of water by which the Colorado River is augmented pursuant to the investigations authorized by title II of this Act and any future Congressional authorization. The repayment of costs allocated to recreation and fish and wildlife enhancement shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213): *Provided,* That all of the separable and joint costs allocated to recreation and fish and wildlife enhancement as a part of the Dixie project, Utah, shall be nonreimbursable. Costs allocated to nonreimbursable purposes shall be nonreturnable under the provisions of this Act. (82 Stat. 894; 43 U.S.C. § 1541)

EXPLANATORY NOTE

Reference in the Text. The Water Treaty of 1944 with the United Mexican States (59 Stat. 1219), referred to in the text, appears in Volume II at page 750.

Sec. 402. [Cost allocation for Indian lands.]—The Secretary shall determine the repayment capability of Indian lands within, under, or served by any unit of the project. Construction costs allocated to irrigation of Indian lands (including provision of water for incidental domestic and stock water uses) and within the repayment capability of such lands shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), and such costs that are beyond repayment capability of such lands shall be nonreimbursable. (82 Stat. 894; 43 U.S.C. § 1542)

EXPLANATORY NOTE

Reference in the Text. The Act of July 1, 1932 (47 Stat. 564), referred to in the text, is the so-called Leavitt Act, which provides, among other things, that the collection of all construction costs against any Indian-owned lands within any Government irrigation project be deferred, and no assessments be made on behalf of such charges against such lands, until the Indian title thereto shall have been extinguished. It further provides for the cancellation of certain construction assessments previously levied. The 1932 Act appears in Volume I at page 504.

NOTE OF OPINION

1. Use of power revenues

Power revenues of the Central Arizona Project may not lawfully be used to return to the Treasury all or a part of the construction costs allocated to Indian lands irrigated from that project. Memorandum of Assistant Solicitor Pelz, July 24, 1974.

Sec. 403. [Lower Colorado River Basin Development Fund established—Credits—Provisions.]—(a) There is hereby established a separate fund in the Treasury of the United States to be known as the Lower Colorado River Basin Development Fund (hereafter called the "development fund"), which shall remain available until expended as hereafter provided.

(b) All appropriations made for the purpose of carrying out the provisions of title III of this Act shall be credited to the development fund as advances from the general fund of the Treasury, and shall be available for such purpose.

(c) There shall also be credited to the development fund—

(1) all revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), including revenues which, after completion of payout of the Central Arizona Project as required herein are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of said project:

(2) any Federal revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis projects, are surplus, as determined

by the Secretary, to the operation, maintenance, and replacement requirements of those projects: *Provided, however,* That the Secretary is authorized and directed to continue the in-lieu-of-tax payments to the States of Arizona and Nevada provided for in section 2(c) of the Boulder Canyon Project Adjustment Act so long as revenues accrue from the operation of the Boulder Canyon project; and

(3) any Federal revenues from that portion of the Pacific Northwest-Pacific Southwest intertie located in the States of Nevada and Arizona which, after completion of repayment requirements of the said part of the Pacific Northwest-Pacific Southwest intertie located in the States of Nevada and Arizona, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of said portion of the Pacific Northwest-Pacific Southwest intertie and related facilities.

(d) All moneys collected and credited to the development fund pursuant to subsection (b) and clauses (1) and (3) of subsection (c) of this section and the portion of revenues derived from the sale of power and energy for use in Arizona pursuant to clause (2) of subsection (c) of this section shall be available, without further appropriation, for—

(1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the projects, within such separate limitations as may be included in annual appropriation Acts; and

(2) payments to reimburse water users in the State of Arizona for losses sustained as a result of diminution of the production of hydroelectric power at Coolidge Dam, Arizona, resulting from exchanges of water between users in the States of Arizona and New Mexico as set forth in section 304(f) of this Act.

(e) Revenues credited to the development fund shall not be available for construction of the works comprised within any unit of the project herein or hereafter authorized except upon appropriation by the Congress.

(f) Moneys credited to the development fund pursuant to subsection (b) and clauses (1) and (3) of subsection (c) of this section and the portion of revenues derived from the sale of power and energy for use in Arizona pursuant to clause (2) of subsection (c) of this section in excess of the amount necessary to meet the requirements of clauses (1) and (2) of subsection (d) of this section shall be paid annually to the general fund of the Treasury to return—

(1) the costs of each unit of the projects or separable feature thereof authorized pursuant to title III of this Act which are allocated to irrigation, commercial power, or municipal and industrial water supply, pursuant to this Act within a period not exceeding fifty years from the date of completion of each such unit or separable feature, exclusive of any development period authorized by law: *Provided,* That return of the cost, if any, required by section 307 shall not be made until after the payout period of the Central Arizona Project as authorized herein; and

(2) interest (including interest during construction) on the unamortized balance of the investment in the commercial power and municipal and industrial water supply features of the project at a rate determined by the Secretary of the Treasury in accordance with the provisions of subsection (h) of this section, and interest due shall be a first charge.

(g) All revenues credited to the development fund in accordance with clause (c)(2) of this section (excluding only those revenues derived from the sale of power and energy for use in Arizona during the payout period of the Central Arizona Project as authorized herein) and such other revenues as remain in the development fund after making the payments required by subsections (d) and (f) of this section shall be available (1) to make payments, if any, as required by sections 307 and 502 of this Act, (2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a) (2), 205(a) (3), and 205(b) (1) of the Colorado River Salinity Control Act and (3) upon appropriation by the Congress, to assist in the repayment of reimbursable costs incurred in connection with units hereafter constructed to provide for the augmentation of the water supplies of the Colorado River for use below Lee Ferry as may be authorized as a result of the investigations and recommendations made pursuant to section 201 and subsection 203(a) of this Act.

(h) The interest rate applicable to those portions of the reimbursable costs of each unit of the project which are properly allocated to commercial power development and municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the first advance is made for initiating construction of such unit, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issue.

(i) Business-type budgets shall be submitted to the Congress annually for all operations financed by the development fund. (82 Stat. 894; § 205(b)(2), Act of June 24, 1974, 88 Stat. 266; 43 U.S.C. § 1543)

EXPLANATORY NOTE

1974 Amendment. Section 205(b) (2) of the Colorado River Basin Salinity Control Act (Act of June 24, 1974, 88 Stat. 266, 43 U.S.C. § 1571 *et seq.*) amended section 403(g) to provide for the repayment from the Lower Colorado River Basin Development Fund of certain costs of salinity control units by (1) adding paragraph (2) as it appears above, and (2) redesignating former paragraph (2) as paragraph (3). The 1974 Act appears in Volume IV in chronological order.

NOTES OF OPINIONS

Meaning of "unit" 1
Use of Reclamation fund 2

1. Meaning of "unit"

The legislative history of the Colorado River Basin Project Act demonstrates that the "unit" referred to in section 403(h) is the Central Arizona Project and the "project" referred to is the Colorado River Basin Project. The section refers to "each unit of the project" even though the Central Arizona Project

is the only unit authorized, as earlier versions of the bill provided for other units which were deleted before enactment and appropriate stylistic revisions of section 403(h) were apparently not made. Memorandum of Associate Solicitor Leshy to Assistant Solicitor, Audit and Inspection, October 11, 1979, in re interest charges for the Central Arizona Project.

2. Use of Reclamation fund

Although the reclamation fund has received advances from the general fund of the Treasury, it remains separate and distinct from the general fund. As a general rule, if a project is authorized under Reclamation law, or is supplementary to Reclamation law, the reclamation fund is available to finance the costs thereof, absent evidence of Congressional intent to the contrary. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

The specific references to the general fund of the Treasury in section 403 show clearly that Congress intended the Lower Colorado River Basin Development Fund to be financed from the general fund and therefore preclude transfer of funds in the reclamation fund to the Development Fund. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

Sec. 404. [Report to Congress.]—On January 1 of each year the Secretary shall report to the Congress, beginning with the fiscal year ending June 30, 1969, upon the status of the revenues from and the cost of constructing, operating, and maintaining each lower basin unit of the project for the preceding fiscal year. The report of the Secretary shall be prepared to reflect accurately the Federal investment allocated at that time to power, to irrigation, and to other purposes, the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment. (82 Stat. 896; 43 U.S.C. § 1544)

TITLE V—UPPER COLORADO RIVER BASIN: AUTHORIZATIONS AND REIMBURSEMENTS

Sec. 501. (a) [Colorado River Storage Project Act amended to provide for construction of Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel, and Central Utah (Uintah unit) projects.]—In order to provide for the construction, operation, and maintenance of the Animas-La Plata Federal reclamation project, Colorado-New Mexico; the Dolores, Dallas Creek, West Divide, and San Miguel Federal reclamation projects, Colorado; and the Central Utah project (Uintah unit), Utah, as participating projects under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), and to provide for the completion of planning reports on other participating projects, clause (2) of section 1 of said Act is hereby further amended by (i) inserting the words "and the Uintah unit" after the word "phase" within the parenthesis following "Central Utah", (ii) deleting the words "Pine River Extension" and inserting in lieu thereof the words "Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel", (iii) adding after the words "Smith Fork:" the proviso "*Provided,* That construction of the Uintah unit of the Central Utah project shall not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted such report to the Congress along with his certification that, in his judgment, the benefits of such unit or segment will exceed the costs and that such unit is physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof:". Sec-

tion 2 of said Act is hereby further amended by (i) deleting the words "Parshall, Troublesome, Rabbit Ear, San Miguel, West Divide, Tomichi Creek, East River, Ohio Creek, Dallas Creek, Dolores, Fruit Growers Extension, Animas-La Plata", and inserting after the words "Yellow Jacket" the words "Basalt Middle Park (including the Troublesome, Rabbit Ear, and Azure units), Upper Gunnison (including the East River, Ohio Creek, and Tomichi Creek units), Lower Yampa (including the Juniper and Great Northern units), Upper Yampa (including the Hayden Mesa, Wessels, and Toponas units)"; (ii) by inserting after the word "Sublette" the words "(including a diversion of water from the Green River to the North Platte River Basin in Wyoming), Ute Indian unit of the Central Utah Project, San Juan County (Utah), Price River, Grand County (Utah), Gray Canyon, and Juniper (Utah)"; and (iii) changing the period after "projects" to a colon and adding the following proviso: "*Provided,* That the planning report for the Ute Indian unit of the Central Utah participating project shall be completed on or before December 31, 1974, to enable the United States of America to meet the commitments heretofore made to the Ute Indian Tribe of the Uintah and Ouray Indian Reservation under the agreement dated September 20, 1965 (Contract Numbered 14–06–W–194).". The amount which section 12 of said Act authorizes to be appropriated is hereby further increased by the sum of $392,000,000, plus or minus such amounts, if any, as may be required, by reason of changes in construction costs as indicated by engineering cost indices applicable to the type of construction involved. This additional sum shall be available solely for the construction of the Animas-La Plata, Dolores, Dallas Creek, West Divide, and San Miguel projects herein authorized. (82 Stat. 896; 43 U.S.C. §§ 620, 620nt, 620a, 620k note)

NOTE OF OPINION

1. Uintah unit, discount rates

In evaluating the financial feasibility of the Uintah Unit of the Central Utah Project in the certification report of April 25, 1975, it was not necessary to use the 5⅞ percent discount rate then in use as opposed to the 3¼ percent discount rate employed in the feasibility report on which Congress had relied in its September 30, 1968 authorization of the project. The 3¼ percent discount rate was one of the key assumptions on which the project had received public support and Congressional approval in 1968. Moreover, the use of the lower discount rate has been fully disclosed to Congress, which can withhold appropriation authorization if the lower rate is no longer acceptable. Letter of Solicitor Austin to Representative Gunn McKay, February 24, 1976.

(b) [Construction to be concurrent with Central Arizona Project construction.]—The Secretary is directed to proceed as nearly as practicable with the construction of the Animas-La Plata, Dolores, Dallas Creek, West Divide, and San Miguel participating Federal reclamation projects concurrently with the construction of the Central Arizona Project, to the end that such projects shall be completed not later than the date of the first delivery of water from said Central Arizona Project: *Provided,* That an appropriate repayment contract for each of said participating projects shall have been

executed as provided in section 4 of the Colorado River Storage Project Act (70 Stat. 107) before construction shall start on that particular project. (82 Stat. 897; 43 U.S.C. § 620a-1)

(c) [Animas-La Plata Project Compact—Condition precedent to construction—Consent of Congress.]—The Animas-La Plata Federal reclamation project shall be constructed and operated in substantial accordance with the engineering plans set out in the report of the Secretary transmitted to the Congress on May 4, 1966, and printed as House Document 436, Eighty-ninth Congress: *Provided,* That construction of the Animas-La Plata Federal reclamation project shall not be undertaken until and unless the States of Colorado and New Mexico shall have ratified the following compact to which the consent of Congress is hereby given:

"ANIMAS-LA PLATA PROJECT COMPACT

"The State of Colorado and the State of New Mexico, in order to implement the operation of the Animas-La Plata Federal Reclamation Project, Colorado-New Mexico, a proposed participating project under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620) and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and have agreed upon the following articles:

"ARTICLE I

"A. The right to store and divert water in Colorado and New Mexico from the La Plata and Animas River systems, including return flow to the La Plata River from Animas River diversions, for uses in New Mexico under the Animas-La Plata Federal Reclamation Project shall be valid and of equal priority with those rights granted by decree of the Colorado state courts for the uses of water in Colorado for that project, providing such uses in New Mexico are within the allocation of water made to that state by articles III and XIV of the Upper Colorado River Basin Compact (63 Stat. 31).

"B. The restrictions of the last sentence of Section (a) of Article IX of the Upper Colorado River Basin Compact shall not be construed to vitiate paragraph A of this article.

"ARTICLE II

"This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States." (82 Stat. 897)

(d) [Acreage limitation.]—The Secretary shall, for the Animas-La Plata, Dolores, Dallas Creek, San Miguel, West Divide, and Seedskadee participating projects of the Colorado River storage project, establish the nonexcess irrigable acreage for which any single ownership may receive project water at one hundred and sixty acres of class 1 land or the equivalent thereof, as determined by the Secretary, in other land classes. (82 Stat. 898; 43 U.S.C. § 620a-2)

(e) [Compliance with appropriation priorities.]—In the diversion and storage of water for any project or any parts thereof constructed under the

authority of this Act or the Colorado River Storage Project Act within and for the benefit of the State of Colorado only, the Secretary is directed to comply with the constitution and statutes of the State of Colorado relating to priority of appropriation; with State and Federal court decrees entered pursuant thereto; and with operating principles, if any, adopted by the Secretary and approved by the State of Colorado. (82 Stat. 898; 43 U.S.C. § 620c-1)

(f) [Definition of "any western slope appropriations."]—The words "any western slope appropriations" contained in paragraph (i) of that section of Senate Document Numbered 80, Seventy-fifth Congress, first session, entitled "Manner of Operation of Project Facilities and Auxiliary Features", shall mean and refer to the appropriation heretofore made for the storage of water in Green Mountain Reservoir, a unit of the Colorado-Big Thompson Federal reclamation project, Colorado; and the Secretary is directed to act in accordance with such meaning and reference. It is the sense of Congress that this directive defines and observes the purpose of said paragraph (i), and does not in any way affect or alter any rights or obligations arising under said Senate Document Numbered 80 or under the laws of the State of Colorado. (82 Stat. 898)

Sec. 502. [Reimbursement to cover Hoover Dam deficiency.]—The Upper Colorado River Basin Fund established under section 5 of the Colorado River Storage Project Act (70 Stat. 107; 43 U.S.C. 620d) shall be reimbursed from the Colorado River Development Fund established by section 2 of the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a) for the money expended heretofore or hereafter from the Upper Colorado River Basin Fund to meet deficiencies in generation at Hoover Dam during the filling period of storage units of the Colorado River storage project pursuant to the criteria for the filling of Glen Canyon Reservoir (27 Fed. Reg. 6851, July 19, 1962). For this purpose, $500,000 for each year of operation of Hoover Dam and powerplant, commencing with fiscal year 1970, shall be transferred from the Colorado River Development Fund to the Upper Colorado River Basin Fund, in lieu of application of said amounts to the purposes stated in section 2(d) of the Boulder Canyon Project Adjustment Act, until such reimbursement is accomplished. To the extent that any deficiency in such reimbursement remains as of June 1, 1987, the amount of the remaining deficiency shall then be transferred to the Upper Colorado River Basin Fund from the Lower Colorado River Basin Development Fund, as provided in subsection (g) of section 403. (82 Stat. 898; 43 U.S.C. § 620d-1)

TITLE VI—GENERAL PROVISIONS: DEFINITIONS: CONDITIONS

Sec. 601. (a) [Existing law unaffected.]—Nothing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the

United Mexican States (Treaty Series 994; 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), or, except as otherwise provided herein, the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a) or the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620).

(b) [Reports required.]—The Secretary is directed to—

(1) make reports as to the annual consumptive uses and losses of water from the Colorado River system after each successive five-year period, beginning with the five-year period starting on October 1, 1970. Such reports shall include a detailed breakdown of the beneficial consumptive use of water on a State-by-State basis. Specific figures on quantities consumptively used from the major tributary streams flowing into the Colorado River shall also be included on a State-by-State basis. Such reports shall be prepared in consultation with the States of the lower basin individually and with the Upper Colorado River Commission, and shall be transmitted to the President, the Congress, and to the Governors of each State signatory to the Colorado River Compact; and

(2) condition all contracts for the delivery of water originating in the drainage basin of the Colorado River system upon the availability of water under the Colorado River Compact.

(c) [Federal officials and agencies to comply—Suit authorized for lack of compliance.]—All Federal officers and agencies are directed to comply with the applicable provisions of this Act, and of the laws, treaty, compacts, and decree referred to in subsection (a) of this section, in the storage and release of water from all reservoirs and in the operation and maintenance of all facilities in the Colorado River system under the jurisdiction and supervision of the Secretary, and in the operation and maintenance of all works which may be authorized hereafter for the augmentation of the water supply of the Colorado River system. In the event of failure of any such officer or agency to so comply, any affected State may maintain an action to enforce the provisions of this section in the Supreme Court of the United States and consent is given to the joinder of the United States as a party in such suit or suits, as a defendant or otherwise. (82 Stat. 899; 43 U.S.C. § 1551)

NOTE OF OPINION

1. Navajo Project

The 34,100 acre-feet a year of Colorado River water to be supplied under a water service contract to the coal-fuel Navajo Project must be charged to the 50,000 acre-feet a year of Upper Basin water that has been apportioned to Arizona by Article III of the Upper Colorado River Basin Compact. The Navajo Tribe may not demand water in excess of the apportionment to satisfy their reserved water rights, as the Tribe has agreed to such water use in the plant site lease, has encouraged the project to go forward, and will realize substantial benefit from the project. Solicitor Melich Opinion, 76 I.D. 357 (December 10, 1969).

Sec. 602. (a) [Coordination of reservoir operations—Criteria.]—In order to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican

Water Treaty, the Secretary shall propose criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. To effect in part the purposes expressed in this paragraph, the criteria shall make provision for the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell in the following listed order of priority:

(1) releases to supply one-half the deficiency described in article III(c) of the Colorado River Compact, if any such deficiency exists and is chargeable to the States of the Upper Division, but in any event such releases, if any, shall not be required in any year that the Secretary makes the determination and issues the proclamation specified in section 202 of this Act;

(2) releases to comply with article III(d) of the Colorado River Compact, less such quantities of water delivered into the Colorado River below Lee Ferry to the credit of the States of the Upper Division from other sources; and

(3) storage of water not required for the releases specified in clauses (1) and (2) of this subsection to the extent that the Secretary, after consultation with the Upper Colorado River Commission and representatives of the three Lower Division States and taking into consideration all relevant factors (including, but not limited to, historic streamflows, the most critical period of record, and probabilities of water supply), shall find this to be reasonably necessary to assure deliveries under clauses (1) and (2) without impairment of annual consumptive uses in the upper basin pursuant to the Colorado River Compact: *Proided,* That water not so required to be stored shall be released from Lake Powell: (i) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead, (ii) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and (iii) to avoid anticipated spills from Lake Powell. (82 Stat. 900; 43 U.S.C. § 1552)

NOTES OF OPINIONS

Environmental impact statements 1-5
Glen Canyon Dam 1
Lake Powell, Rainbow Bridge 6

1. Environmental impact statements — Glen Canyon Dam

It is reasonable for the Bureau of Reclamation to issue a comprehensive environmental impact statement for the continuing operation of entire Colorado River Basin Project and not to prepare a site-specific environmental impact statement for the Glen Canyon Dam and Reservoir component of the project, whose impounded waters form Lake Powell. The Colorado River Basin Project Act itself recognizes the comprehensive nature of the project 1) by providing in section 102(a) that the purpose of the Act is the further comprehensive development of the water resources of the Colorado River Basin and 2) by requiring, in section 602(a), that the Secretary of the Interior promulgate criteria for the storage and release of water from all of

the storage units of the Colorado River Project, which include units authorized by the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. There is no proposal for criteria or any other major action under the National Environmental Policy Act which involves the Glen Canyon Project singly. Moreover, the courts have recognized the interrelated and comprehensive development of this water resource project. *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

6. Lake Powell, Rainbow Bridge

Congress has repealed the last sentence of section 3 of the Colorado River Storage Project Act and the proviso of section 1(2) of that same Act, both designed to protect the Rainbow Bridge, by (1) disallowing from the Public Works Appropriation Act, 1961, an appropriation to initiate construction of facilities to protect Rainbow Bridge National Monument after specifically finding that the impoundment of water in Glen Canyon Reservoir would not result in any structural damage to the bridge, and (2) by including in the 1961 Appropriations Act and all subsequent public works appropriations acts through 1973 a proviso prohibiting the use of funds appropriated for the Upper Colorado River Basin Fund for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument. Nor can a court order that the Glen Canyon Dam be operated at a reduced level so that the lake would not exceed the level at which it reaches the outer boundary of the monument, as this would have the effect of placing the Glen Canyon facilities, as related to others in the overall system, at about one-half design capacity. To so radically change the effectiveness of the principal regulating reservoir would prevent the attainment of the objectives of the Colorado River Compact, the Colorado River Storage Project Act, and the Colorado River Basin Project Act. *Friends of the Earth v. Armstrong*, 485 F.2d 1 (10th Cir. 1974), cert. denied, 414 U.S. 1171 (1974); accord, *Badoni v. Higginson*, 455 F. Supp. 641 (D. Utah 1977), aff'd, 638 F.2d 172 (10 Cir. 1980), cert. denied, 452 U.S. 954 (1981).

(b) [Submission of Criteria to States—Report required.]—Not later than January 1, 1970, the criteria proposed in accordance with the foregoing subsection (a) of this section shall be submitted to the Governors of the seven Colorado River Basin States and to such other parties and agencies as the Secretary may deem appropriate for their review and comment. After receipt of comments on the proposed criteria, but not later than July 1, 1970, the Secretary shall adopt appropriate criteria in accordance with this section and publish the same in the Federal Register. Beginning January 1, 1972, and yearly thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected operation for the current year. As a result of actual operating experience or unforeseen circumstances, the Secretary may thereafter modify the criteria to better achieve the purposes specified in subsection (a) of this section, but only after correspondence with the Governors of the seven Colorado River Basin States and appropriate consultation with such State representatives as each Governor may designate.

(c) [Powerplant operation.]—Section 7 of the Colorado River Storage Project Act shall be administered in accordance with the foregoing criteria. (82. Stat. 900; 43 U.S.C. § 1552)

Sec. 603. (a) [Upper basin rights unaffected.]—Rights of the upper basin to the consumptive use of water available to that basin from the Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin.

(b)[Upper Colorado River Commission unaffected.]—Nothing in this Act shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission. (82 Stat. 901; 43 U.S.C. § 1553)

Sec. 604. [Reclamation laws to govern.]—Except as otherwise provided in this Act, in constructing, operating, and maintaining the units of the projects herein and hereafter authorized, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) to which laws this Act shall be deemed a supplement. (82 Stat. 901; 43 U.S.C. § 1554)

Sec. 605. [Federal Power Act limited.]—Part I of the Federal Power Act (41 Stat. 1063; 16 U.S.C. 791a–823) shall not be applicable to the reaches of the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam until and unless otherwise provided by Congress. (82 Stat. 901; 43 U.S.C. § 1555)

EXPLANATORY NOTE

Reference in the Text. Part I of the Federal Power Act, referred to in the text, appears in Volume I at page 262.

Sec. 606. [Definitions.)—As used in this Act, (a) all terms which are defined in the Colorado River Compact shall have the meanings therein defined;

(b) "Main stream" means the main stream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon;

(c) "User" or "water user" in relation to main stream water in the lower basin means the United States or any person or legal entity entitled under the decree of the Supreme Court of the United States in Arizona against California, and others (376 U.S. 340), to use main stream water when available thereunder;

(d) "Active storage" means that amount of water in reservoir storage, exclusive of bank storage, which can be released through the existing reservoir outlet works;

(e) "Colorado River Basin States" means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(f) "Western United States" means those States lying wholly or in part west of the Continental Divide; and

(g) "Augment" or "augmentation", when used herein with reference to water, means to increase the supply of the Colorado River or its tributaries by the introduction of water into the Colorado River system, which is in addition to the natural supply of the system. (82 Stat. 901; 43 U.S.C. § 1556)

EXPLANATORY NOTE

Legislative History. S. 1004, Public Law 90-537 in the 90th Congress. Reported in Senate from Interior and Insular Affairs July 26, 1967; S. Rept. No. 408. Passed Senate August 7, 1967. Passed House, amended, May 16, 1968. Senate asks for a conference July

15, 1968. House agrees to a conference July 17, 1968. Conference report filed September 4, 1968; H.R. Rept. No. 1861. House agrees to conference report September 5, 1968. Senate agrees to conference report September 12, 1968. Companion bill H.R. 3300 reported in House from Interior and Insular Affairs April 24, 1968; H.R. Rept. No. 1312.

FLAMING GORGE NATIONAL RECREATION AREA

An act to establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes. (Act of October 1, 1968, Public Law 90-540, 82 Stat. 904)

[Sec. 1. Flaming Gorge National Recreation Area established.]—In order to provide, in furtherance of the purposes of the Colorado River storage project, for the public outdoor recreation use and enjoyment of the Flaming Gorge Reservoir and surrounding lands in the States of Utah and Wyoming and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters, there is hereby established, subject to valid existing rights, the Flaming Gorge National Recreation Area in the States of Utah and Wyoming (hereinafter referred to as the "recreation area"). The boundaries of the recreation area shall be those shown on the map entitled "Proposed Flaming Gorge National Recreation Area," which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture. (82 Stat. 904; 16 U.S.C. § 460v)

Sec. 2. [Secretary of Agriculture to administer—Coordination with Colorado River storage project.]—The administration, protection, and development of the recreation area shall be by the Secretary of Agriculture (hereinafter called the "Secretary") in accordance with the laws, rules, and regulations applicable to national forests, in a manner coordinated with the other purposes of the Colorado River storage project, and in such manner as in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources as in his judgment will promote or are compatible with, and do not significantly impair the purposes for which the recreation area is established: *Provided,* That lands or waters needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation. (82 Stat. 904; 16 U.S.C. § 460v-1)

Sec. 3. [Publication of boundaries.]—Within six months after the effective date of this Act, the Secretary shall publish in the Federal Register a detailed description of the boundaries of the recreation area. Following such publication, the Secretary may make minor adjustments in the boundary of the recreation area by publication of the amended description thereof in the Federal Register: *Provided,* That the total acreage of the recreation area within the adjusted boundary does not exceed the acreage of the recreation area as shown on the map referred to in section 1 hereof. (82 Stat. 904; 16 U.S.C. § 460v-2)

Sec. 4. [Regulation of hunting, fishing, and trapping—State laws unaffected.]—The Secretary shall permit hunting, fishing, and trapping on

the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: *Provided,* That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Nothing in this Act shall affect the jurisdiction or responsibilities of the States of Utah and Wyoming under other provisions of State laws with respect to hunting and fishing. (82 Stat. 904; 16 U.S.C. § 460v-3)

Sec. 5. [Lands withdrawn from entry under mining laws—Receipts from leases.]—The lands within the recreation area, subject to valid existing rights, are hereby withdrawn from location, entry, and patent under the United States mining laws. The Secretary of the Interior, under such regulations as he deems appropriate, may permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and he may permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 24, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the purposes of the Colorado River storage project and the Secretary of Agriculture finds that such disposition would not have significant adverse effects on the purposes of the recreation area: *Provided,* That any lease or permit respecting such minerals in the recreation area shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe.

All receipts derived from permits and leases issued under the authority of this section for removal of nonleasable minerals shall be paid into the same funds or accounts in the Treasury of the United States and shall be distributed in the same manner as provided for receipts from national forests. Any receipts derived from permits or leases issued on lands in the recreation area under the Mineral Leasing Act of February 25, 1920, as amended, or the Act of August 7, 1947, shall be disposed of as provided in the applicable Act. (82. Stat. 904; 16 U.S.C. § 640v-4)

EXPLANATORY NOTE

References in the Text. The Act of August 4, 1939, as amended (53 Stat. 1196, 43 U.S.C. § 387 *et seq.*), referred to in the text, is the Reclamation Project Act of 1939. Section 10 thereof appears in Volume I at page 656. The Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. § 351 *et seq.*), also referred to in the text, does not appear herein. An extract from the Mineral Leasing Act of February 25, 1920 (30 U.S.C. § 181 *et seq.*), concerning receipts received from permits and leases, appears in Volume I at page 249. That extract, section 35, provides for 52½% of the money received from such permits or leases to be paid into the reclamation fund established by the Reclamation Act of June 17, 1902. The balance of the Mineral Leasing Act does not appear herein.

Sec. 6. [Ashley National Forest expanded.]—The boundaries of the Ashley National Forest are hereby extended to include all of the lands not

presently within such boundaries lying within the recreation area as described in accordance with sections 1 and 3 of this Act. (82 Stat. 905; 16 U.S.C. § 640v-5)

Sec. 7. [Unused public lands of Colorado River storage project within Recreation Area added to Ashley National Forest—Limitations.]—Subject to any valid claim or entry now existing and hereafter legally maintained, all public lands of the United States and all lands of the United States heretofore or hereafter acquired or reserved for use in connection with the Colorado River storage project within the exterior boundaries of the recreation area which have not heretofore been added to and made a part of the Ashley National Forest, and all lands of the United States acquired for the purpose of the recreation area, are hereby added to and made a part of the Ashley National Forest: *Provided,* That lands within the flow lines of any reservoir operated and maintained by the Department of the Interior or otherwise needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation. (82 Stat. 905; 16 U.S.C. § 640v-6)

Sec. 8. [Availability of funds.]—Funds hereafter appropriated and available for the acquisition of lands and waters and interests therein in the national forest system pursuant to section 6 of the Act of September 3, 1964 (78 Stat. 897, 903), shall be available for the acquisition of any lands, waters, and interests therein within the boundaries of the recreation area. (82 Stat. 905; 16 U.S.C. § 640v-7)

EXPLANATORY NOTE

Reference in the Text. The Act of September 3, 1964 (78 Stat. 897), referred to in the text, is the Land and Water Conservation Fund Act of 1965. Section 6 of the Act, which provides for the allocation of moneys for Federal purposes, appears in Volume III at page 1793.

Sec. 9. [State laws unaffected.]—Nothing in this Act shall deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction within the recreation area consistent with the provisions of this Act, or of its right to tax persons, corporations, franchises, or other non-Federal property, including mineral or other interests, in or on lands or waters within the recreation area. (82. Stat. 905; 16 U.S.C. § 640v-8)

EXPLANATORY NOTE

Legislative History. S. 444, Public Law 90-540 in the 90th Congress. Reported in Senate from Interior and Insular Affairs May 27, 1968; S. Rept. No. 1150. Passed Senate May 29, 1968. Passed House September 16, 1968. Companion bill H.R. 15245 reported in House from Interior and Insular Affairs September 4, 1968; H.R. Rept. No. 1854.

WILD AND SCENIC RIVERS ACT

An act to provide for a National Wild and Scenic Rivers System and for other purposes. (Act of October 2, 1968, Public Law 90-542, 82 Stat. 906)

[Sec. 1. Short title]—(a) This Act may be cited as the "Wild and Scenic Rivers Act." (82 Stat 906; 16 U.S.C. § 1271 note)

(b)[National policy.]—It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. (82 Stat. 906; 16 U.S.C. § 1271)

(c) [Purpose.]—The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time. (82 Stat. 906; 16 U.S.C. § 1272)

Sec. 2. (a) [System established—Designation by State Government—Administration of federally owned lands.]—The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political

subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Act of 1965 or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

EXPLANATORY NOTES

1978 Amendment. Section 761 of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3533) amended subsection (a) by: adding language requiring notification of the Federal Energy Regulatory Commission and publication of any application in the Federal Register; making the administration of federally owned lands an expense of the United States; providing that amounts available to the States under other provisions of law for State-designated rivers shall not be treated as an expense of the United States; and providing that federally owned lands within boundaries of State-designated rivers shall not be deemed to be owned or administered by State or local authority. The 1978 Act does not appear herein.

1976 Amendment. Section 1(1) of the Act of September 11, 1976 (Public Law 94-407, 90 Stat. 1238) amended subsection (a) by adding language providing for inclusion of the specified segment of the New River in North Carolina. The 1976 Act does not appear herein.

Reference in the Text. The Land and Water Conservation Act of 1965 [sic], referred to in subsection (a) of the text, is the Land and Water Conservation Fund Act of 1965 (Act of September 3, 1964, Public Law 88-578, 78 Stat. 897). The Act appears in Volume III at page 1785.

(b) [Eligibility for inclusion—Criteria.]—A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (82 Stat. 906; § 1(1), Act of September 11, 1976, 90 Stat. 1238; § 761, Act of November 10, 1978, 92 Stat. 3533; 16 U.S.C. § 1273)

Sec. 3. (a) [Components of system.]—The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) Clearwater, Middle Fork, Idaho—The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) Eleventh Point, Missouri—The segment of the river extending downstream from Thomasville to State Highway 142; to be administered by the Secretary of Agriculture.

(3) Feather, California—The entire Middle Fork downstream from the confluence of its tributary streams one kilometer south of Beckwourth, California; to be administered by the Secretary of Agriculture.

(4) Rio Grande, New Mexico—The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) Rogue, Oregon—The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

(6) Saint Croix, Minnesota and Wisconsin—The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekago, from Lake Namekago downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior: *Provided*, That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this Act may be expended for the acquisition or development of lands in connection with, or for administration under this act of, that portion of the Saint Croix River between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this Act. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 10 of this Act. A one-thousand-three-hundred-and-

eighty-acre portion of the area commonly known as the Velie Estate, located adjacent to the Saint Croix River in Douglas County, Wisconsin, as depicted on the map entitled "Boundary Map/Velie Estate—Saint Croix National Scenic Riverway", dated September 1980, and numbered 630-90,001, may be acquired by the Secretary without regard to any acreage limitation set forth in subsection (b) of this section or subsection (a) or (b) of section 6 of this Act.

(7) Salmon, Middle Fork, Idaho—From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) Wolf, Wisconsin—From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(9) Lower Saint Croix, Minnesota and Wisconsin—The segment between the dam near Taylors Falls and its confluence with the Mississippi River: *Provided,* (i) That the upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and (ii) That the lower twenty-five miles shall be designated by the Secretary upon his approval of an application for such designation made by the Governors of the State of Minnesota and Wisconsin.

(10) Chattooga, North Carolina, South Carolina, Georgia—The Segment from 0.8 mile below Cashiers Lake in North Carolina to Tugaloo Reservoir, and the West Fork Chattooga River from its junction with Chattooga upstream 7.3 miles, as generally depicted on the boundary map entitled "Proposed Wild and Scenic Chattooga River and Corridor Boundary", dated August 1973; to be administered by the Secretary of Agriculture: *Provided,* That the Secretary of Agriculture shall take such action as is provided for under subsection (b) of this section within one year from May 10, 1974: *Provided further,* That for the purposes of this river, there are authorized to be appropriated not more than $5,200,000 for the acquisition of lands and interests in lands and not more than $809,000 for development.

(11) Rapid River, Idaho—The segment from the headwaters of the main stem to the national forest boundary and the segment of the West Fork from the wilderness boundary downstream to the confluence with the main stem, as a wild river.

(12) Snake, Idaho and Oregon—The segment from Hells Canyon Dam downstream to Pittsburgh Landing, as a wild river; and the segment from Pittsburgh Landing downstream to an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Willamette meridian, as a scenic river.

(13) Flathead, Montana—The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence to the South Fork; and the South Fork from its origin to the Hungry Horse Reservoir, as generally depicted on the map entitled "Proposed Flathead Wild and Scenic River Boundary Location" dated February 1976; to be administered by agencies of the Departments of the Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken

under subsection (b) of this section shall be taken within one year from October 12, 1976. For the purposes of this river, there are authorized to be appropriated not more than $6,719,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(14) Missouri, Montana—The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled "Missouri Breaks Freeflowing River Proposal", dated October 1975, to be administered by the Secretary of the Interior. For the purposes of this river, there are authorized to be appropriated not more than $1,800,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(15) Obed, Tennessee—The segment from the western edge of the Catoosa Wildlife Management Area to the confluence with the Emory River; Clear Creek from the Morgan County line to the confluence with the Obed River, Daddys Creek from the Morgan County line to the confluence with the Obed River; and the Emory River from the confluence with the Obed River to the Nemo bridge as generally depicted and classified on the stream classification map dated December 1973. The Secretary of the Interior shall take such action, with the participation of the State of Tennessee as is provided for under subsection (b) of this section within one year following October 12, 1976. The development plan required by such subsection (b) shall include cooperative agreements between the State of Tennessee acting through the Wildlife Resources Agency and the Secretary of the Interior. Lands within the Wild and Scenic River boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency in such a way as to protect the wildlife resources and primitive character of the area, and without further development or roads, campsites, or associated recreational facilities unless deemed necessary by that agency for wildlife management practices. The Obed Wild and Scenic River shall be managed by the Secretary of the Interior. For the purposes of carrying out the provisions of this Act with respect to this river, there are authorized to be appropriated such sums as may be necessary, but not to exceed $2,000,000 for the acquisition of lands or interests in lands and not to exceed $400,000 for development. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(16) Pere Marquette, Michigan—The segment downstream from the junction of the Middle and Little South Branches to its junction with United States Highway 31 as generally depicted on the boundary map entitled "Proposed Boundary Location, Pere Marquette Wild and Scenic River,"; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is provided for under subsection (b) of this section with respect to the segment referred to in this paragraph within one year from November 10, 1978. Any development or management plan prepared pur-

suant to subsection (b) of this section shall include (a) provisions for the dissemination of information to river users and (b) such regulations relating to the recreational and other uses of the river as may be necessary in order to protect the area comprising such river (including lands contiguous or adjacent thereto) from damage or destruction by reason of overuse and to protect its scenic, historic, esthetic and scientific values. Such regulations shall further contain procedures and means which shall be utilized in the enforcement of such development and management plan. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $8,125,000 for the acquisition of lands or interests in lands and $402,000 for development.

(17) Rio Grande, Texas—The segment on the United States side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde County line; to be administered by the Secretary of the Interior. The Secretary shall, within two years after November 10, 1978, take such action with respect to the segment referred to in this paragraph as is provided for under subsection (b) of this section. The action required by such subsection (b) shall be undertaken by the Secretary, after consultation with the United States Commissioner, International Boundary and Water Commission, United States and Mexico, and appropriate officials of the State of Texas and its political subdivisions. The development plan required by subsection (b) of this section shall be construed to be a general management plan only for the United States side of the river and such plan shall include, but not be limited to, the establishment of a detailed boundary which shall include an average of not more than 160 acres per mile. Nothing in this Act shall be construed to be in conflict with—

(A) the commitments or agreements of the United States made by or in pursuance of the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington, February 1944 (59 Stat. 1219), or

(B) the treaty between the United States and Mexico regarding maintenance of the Rio Grande and Colorado River as the international boundary between the United States and Mexico, signed November 23, 1970.

For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not more than $1,650,000 for the acquisition of lands and interests in lands and not more than $1,800,000 for development.

(18) Skagit, Washington—The segment from the pipeline crossing at Sedro-Woolley upstream to and including the mouth of Bacon Creek; the Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the boundary of the Glacier Peak Wil-

derness Area at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area; as generally depicted on the boundary map entitled "Skagit River—River Area Boundary"; all segments to be administered by the Secretary of Agriculture. Riprapping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land shall not be considered inconsistent with the values for which such segment is designated. After consultation with affected Federal agencies, State and local government and the interested public, the Secretary shall take such action as is provided for under subsection (b) of this section with respect to the segments referred to in this paragraph within one year from November 10, 1978; as part of such action, the Secretary of Agriculture shall investigate that portion of the North Fork of the Cascade River from its confluence with the South Fork to the boundary of the North Cascades National Park and if such portion is found to qualify for inclusion, it shall be treated as a component of the Wild and Scenic Rivers System designated under this section upon publication by the Secretary of notification to that effect in the Federal Register. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated not more than $11,734,000 for the acquisition of lands or interest in lands and not more than $332,000 for development.

(19) Upper Delaware River, New York and Pennsylvania—The segment of the Upper Delaware River from the confluence of the East and West branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York, as depicted on the boundary map entitled "The Upper Delaware Scenic and Recreational River", dated April 1978; to be administered by the Secretary of the Interior. Subsection (b) of this section shall not apply, and the boundaries and classifications of the river shall be as specified on the map referred to in the preceding sentence, except to the extent that such boundaries or classifications are modified pursuant to section 704(c) of the National Parks and Recreation Act of 1978. Such boundaries and classifications shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated such sums as may be necessary.

(20) Delaware, New York, Pennsylvania, and New Jersey—The segment from the point where the river crosses the northern boundary of the Delaware Water Gap National Recreation Area to the point where the river crosses the southern boundary of such recreation area; to be administered by the Secretary of the Interior. For purposes of carrying out this Act with respect to the river designated by this paragraph, there are authorized to

be appropriated such sums as may be necessary. Action required to be taken under subsection (b) of this section with respect to such segment shall be taken within one year from November 10, 1978, except that, with respect to such segment, in lieu of the boundaries provided for in such subsection (b), the boundaries shall be the banks of the river. Any visitors facilities established for purposes of use and enjoyment of the river under the authority of the Act establishing the Delaware Water Gap National Recreation Area shall be compatible with the purposes of this Act and shall be located at an appropriate distance from the river.

(21) American, California—The North Fork from a point 0.3 mile above Heath Springs downstream to a point approximately 1,000 feet upstream of the Colfax-Iowa Hill Bridge, including the Gold Run Addition Area, as generally depicted on the map entitled "Proposed Boundary Maps" contained in Appendix I of the document dated January 1978 and entitled "A Proposal: North Fork American Wild and Scenic River" published by the United States Forest Service, Department of Agriculture; to be designated as a wild river and to be administered by agencies of the Departments of Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) shall be taken within one year after November 10, 1978; in applying such subsection (b) in the case of the Gold Run Addition Area, the acreage limitation specified therein shall not apply and in applying section 6, subsection (g)(3) of this Act, January 1, 1977 shall be substituted for January 1, 1967. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $850,000 for the acquisition of lands and interests in land and not more than $765,000 for development.

(22) Missouri River, Nebraska, South Dakota—The segment from Gavins Point Dam, South Dakota, fifty-nine miles downstream to Ponca State Park, Nebraska, as generally depicted in the document entitled "Review Report for Water Resources Development, South Dakota, Nebraska, North Dakota, Montana", prepared by the Division Engineer, Missouri River Division, Corps of Engineers, dated August 1977 (hereinafter in this paragraph referred to as the "August 1977 Report"). Such segment shall be administered as a recreational river by the Secretary. The Secretary shall enter into a written cooperative agreement with the Secretary of the Army (acting through the Chief of Engineers) for construction and maintenance of bank stabilization work and appropriate recreational development. After public notice and consultation with the State and local governments, other interested organizations and associations, and the interested public, the Secretary shall take such action as is required pursuant to subsection (b) of this section within one year from November 10, 1978. In administering such river, the Secretary shall, to the extent, and in a manner, consistent with this section—

(A) provide (i) for the construction by the United States of such recreation river features and streambank stabilization structures as the Secretary of the Army (acting through the Chief of Engineers) deems

necessary and advisable in connection with the segment designated by this paragraph, and (ii) for the operation and maintenance of all streambank stabilization structures constructed in connection with such segment (including both structures constructed before November 10, 1978, and structures constructed after such date, and including both structures constructed under the authority of this section and structures constructed under the authority of any other Act); and

(B) permit access for such pumping and associated pipelines as may be necessary to assure an adequate supply of water for owners of land adjacent to such segment and for fish, wildlife, and recreational uses outside the river corridor established pursuant to this paragraph.

The streambank structures to be constructed and maintained under subparagraph (A) shall include, but not be limited to, structures at such sites as are specified with respect to such segment on pages 62 and 63 of the August 1977 Report, except that sites for such structures may be relocated to the extent deemed necessary by the Secretary of the Army (acting through the Chief of Engineers) by reason of physical changes in the river or river area. The Secretary of the Army (acting through the Chief of Engineers) shall condition the construction or maintenance of any streambank stabilization structure or of any recreational river feature at any site under subparagraph (A)(i) upon the availability to the United States of such land and interests in land in such ownership as he deems necessary to carry out such construction or maintenance and to protect and enhance the river in accordance with the purposes of this chapter. Administration of the river segment designated by this paragraph shall be in coordination with, and pursuant to the advice of a Recreational River Advisory Group which shall be established by the Secretary. Such Group may include in its membership, representatives of the affected States and political subdivisions thereof, affected Federal agencies, and such organized private groups as the Secretary deems desirable. Notwithstanding the authority to the contrary contained in section 6, subsection (a) of this Act, no land or interests in land may be acquired without the consent of the owner: *Provided*, That not to exceed 5 per centum of the acreage within the designated river boundaries may be acquired in less than fee title without the consent of the owner, in such instance of the Secretary's determination that activities are occurring, or threatening to occur thereon which constitute serious damage or threat to the integrity of the river corridor, in accordance with the values for which this river was designated. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not to exceed $21,000,000, for acquisition of lands and interests in lands and for development.

(23) Saint Joe, Idaho—The segment above the confluence of the North Fork of the Saint Joe River to Spruce Tree Campground, as a recreational river; the segment above Spruce Tree Campground to Saint Joe Lake, as a wild river, as generally depicted on the map entitled "Saint Joe River Corridor Map" on file with the Chief of the Forest Service and dated September 1978; to be administered by the Secretary of Agriculture. Not-

withstanding any other provision of law, the classification of the Saint Joe River under this paragraph and the subsequent development plan for the river prepared by the Secretary of Agriculture shall at no time interfere with or restrict the maintenance, use, or access to existing or future roads within the adjacent lands nor interfere with or restrict present use of or future construction of bridges across that portion of the Saint Joe designated as a "recreational river" under this paragraph. Dredge or placer mining shall be prohibited within the banks or beds of the main stem of the Saint Joe and its tributary streams in their entirety above the confluence of the main stem with the North Fork of the river. Nothing in this Act shall be deemed to prohibit the removal of sand and gravel above the high water mark of the Saint Joe River and its tributaries within the river corridor by or under the authority of any public body or its agents for the purposes of construction or maintenance of roads. The Secretary shall take such action as is required under subsection (b) of this section within one year from November 10, 1978. For the purposes of this river, there are authorized to be appropriated not more than $1,000,000 for the acquisition of lands or interest in lands.

(24) Salmon, Idaho—(A) The segment of the main river from the mouth of the North Fork of the Salmon River downstream to Long Tom Bar in the following classes:

(i) the forty-six-mile segment from the mouth of the North Fork of the Salmon River to Corn Creek as a recreational river; and

(ii) the seventy-nine-mile segment from Corn Creek to Long Tom Bar as a wild river; all as generally depicted on a map entitled "Salmon River" dated November 1979, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture.

(B) This segment shall be administered by the Secretary of Agriculture: *Provided,* That after consultation with State and local governments and the interested public, the Secretary shall take such action as is required by subsection (b) of this section within one year from July 23, 1980.

(C) The use of motorboats (including motorized jetboats) within this segment of the Salmon River shall be permitted to continue at a level not less than the level of use which occurred during calendar year 1978,

(D) Subject to existing rights of the State of Idaho, including the right of access, with respect to the beds of navigable streams, tributaries or rivers, dredge and placer mining in any form including any use of machinery for the removal of sand and gravel for mining purposes shall be prohibited within the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph; within the fifty-three-mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River; and within the Middle Fork of the Salmon River; and its tributary streams in their entireity: *Provided,* That nothing in this paragraph shall be deemed to prohibit the removal of sand and gravel, outside the boundaries of the River of No Return Wilderness or the Gospel-Hump Wilderness, above the high water mark of the Salmon River or the

Middle Fork and its tributaries for the purposes of construction or maintenance of public roads; *Provided further*, That this paragraph shall not apply to any written mineral leases approved by the Board of Land Commissioners of the State of Idaho prior to January 1, 1980.

(E) The provisions of section 7(a) of this Act with respect to the licensing of dams, water conduits, reservoirs, powerhouses, transmission lines or other project works, shall apply to the fifty-three-mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River.

(F) For the purposes of the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph, there is hereby authorized to be appropriated from the Land and Water Conservation Fund, after October 1, 1980, not more than $6,200,000 for the acquisition of lands and interests in lands.

(25) Alagnak, Alaska—That segment of the main stem and the major tributary to the Alagnak, the Nonvianuk River, within Katmai National Preserve; to be administered by the Secretary of the Interior.

(26) Alatna, Alaska—The main stem within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(27) Aniakchak, Alaska—That portion of the river, including its major tributaries, Hidden Creek, Mystery Creek, Albert Johnson Creek, and North Fork Aniakchak River, within the Aniakchak National Monument and National Preserve; to be administered by the Secretary of the Interior.

(28) Charley, Alaska—The entire river, including its major tributaries, Copper Creek, Bonanza Creek, Hosford Creek, Derwent Creek, Flat-Orthmer Creek, Crescent Creek, and Moraine Creek, within the Yukon-Charley Rivers National Preserve; to be administered by the Secretary of the Interior.

(29) Chilikadrotna, Alaska—That portion of the river within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior.

(30) John, Alaska—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(31) Kobuk, Alaska—That portion within the Gates of the Arctic National Park and Preserve; to be administered by the Secretary of the Interior.

(32) Mulchatna, Alaska—That portion within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior.

(33) Noatak, Alaska—The river from its source in the Gates of the Arctic National Park to its confluence with the Kelly River in the Noatak National Preserve; to be administered by the Secretary of the Interior.

(34) North Fork of the Koyukuk, Alaska—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(35) Salmon, Alaska—That portion within the Kobuk Valley National Park; to be administered by the Secretary of the Interior.

(36) Tinayguk, Alaska—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(37) Tlikakila, Alaska—That portion within the Lake Clark National Park; to be administered by the Secretary of the Interior.

(38) Andreafsky, Alaska—That portion from its source, including all headwaters, and the East Fork, within the boundary of the Yukon Delta National Wildlife Refuge; to be administered by the Secretary of the Interior.

(39) Ivishak, Alaska—That portion from its source, including all headwaters and an unnamed tributary from Porcupine Lake within the boundary of the Arctic National Wildlife Range; to be administered by the Secretary of the Interior.

(40) Nowitna, Alaska—That portion from the point where the river crosses the west limit of township 18 south, range 22 east, Kateel River meridian, to its confluence with the Yukon River within the boundaries of the Nowitna National Wildlife Refuge; to be administered by the Secretary of the Interior.

(41) Selawik, Alaska—That portion from a fork of the headwaters in township 12 north, range 10 east, Kateel River meridian to the confluence of the Kugarak River; within the Selawik National Wildlife Refuge to be administered by the Secretary of the Interior.

(42) Sheenjek, Alaska—The segment within the Arctic National Wildlife Refuge; to be administered by the Secretary of the Interior.

(43) Wind, Alaska—That portion from its source, including all headwaters and one unnamed tributary in township 13 south, within the boundaries of the Arctic National Wildlife Refuge; to be administered by the Secretary of the Interior.

(44) Alagnak, Alaska—Those segments or portions of the main stem and Nonvianuk tributary lying outside and westward of the Katmia [sic] National Park/Preserve and running to the west boundary of township 13 south, range 43 west; to be administered by the Secretary of the Interior.

(45) Beaver Creek, Alaska—The segment of the main stem from the vicinity of the confluence of the Bear and Champion Creeks downstream to its exit from the northeast corner of township 12 north, range 6 east, Fairbanks meridian within the White Mountains National Recreation Area, and the Yukon Flats National Wildlife Refuge, to be administered by the Secretary of the Interior.

(46) Birch Creek, Alaska—The segment of the main stem from the south side of Steese Highway in township 7 north, range 10 east, Fairbanks meridian, downstream to the south side of the Steese Highway in township 10 north, range 16 east; to be administered by the Secretary of the Interior.

(47) Delta, Alaska—The segment from and including all of the Tangle Lakes to a point one-half mile north of Black Rapids; to be administered by the Secretary of the Interior.

(48) Fortymile, Alaska—The main stem within the State of Alaska; O'Brien Creek, South Fork; Napoleon Creek, Franklin Creek, Uhler Creek, Walker Fork downstream from the confluence of Liberty Creek; Wade

Creek; Mosquito Fork downstream from the vicinity of Kechumstuk; West Fork Dennison Fork downstream from the confluence of Logging Cabin Creek; Dennison Fork downstream from the confluence of West Fork Dennison Fork: Logging Cabin Creek; North Fork; Hutchison Creek; Champion Creek; the Middle Fork downstream from the confluence of Joseph Creek; and Joseph Creek; to be administered by the Secretary of the Interior.

(49) Gulkana, Alaska—The main stem from the outlet of Paxon Lake in township 12 north, range 2 west, Copper River meridian to the confluence with Sourdough Creek; the south branch of the west fork from the outlet of an unnamed lake in sections 10 and 15, township 10 north, range 7 west, Copper River meridian to the confluence with the west fork; the north branch from the outlet of two unnamed lakes, one in sections 24 and 25, the second in sections 9 and 10, township 11 north, range 8 west, Copper River meridian to the confluence with the west fork; the west fork from its confluence with the north and south branches downstream to its confluence with the main stem; the middle fork from the outlet of Dickey Lake in township 13 north, range 5 west, Copper River meridian to the confluence with the main stem; to be classified as a wild river area and to be administered by the Secretary of the Interior.

(50) Unalakleet, Alaska—The segment of the main stem from the headwaters in township 12 south, range 3 west, Kateel River meridian extending downstream approximately 65 miles to the western boundary of township 18 south, range 8 west; to be administered by the Secretary of the Interior.

EXPLANATORY NOTES

1980 Amendment. The Act of December 23, 1980 (Public Law 96-580, 94 Stat. 3370) amended subsection (a)(6) by authorizing the acquisition of part of the Velie Estate acreage. The 1980 Act does not appear herein.

1980 Amendment. Section 16 of the Act of September 8, 1980 (Public Law 96-344, 94 Stat. 1137) amended subsection (a)(22) by substituting in the provision following subparagraph (B) "which shall be established" for "which may be established". The 1980 Act does not appear herein.

1980 Amendment. Section 9(a) of the Act of July 8, 1980 (Public Law 96-312, 94 Stat. 952) amended subsection (a) by adding paragraph (24). The 1980 Act does not appear herein.

1980 Amendment. Sections 601 through 603 of the Act of December 3, 1980 (Public Law 96-487, 94 Stat. 2412 through 2414) amended subsection (a) by adding paragraphs (25) through (50).

1979 Amendment. The Act of October 12, 1979 (Public Law 96-87, 93 Stat. 666) amended subsection (a) by substituting "section 704(c) of the National Parks and Recreation Act of 1978" for "section 705(c) of the National Parks and Recreation Act of 1978" in paragraph (19). The 1979 Act does not appear herein.

1978 Amendment. Sections 701 through 703, 704(a), and 705 through 708 of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 1321 through 1330) amended subsection (a) by adding paragraphs (16) through (23). The 1978 Act does not appear herein.

1976 Amendments. Section 601 of the Act of October 12, 1976 (Public Law 94-486, 90 Stat. 2330) amended subsection (a)(3) by inserting the words "downstream from the confluence of its tributary streams one kilometer south of Buckworth, California;" following the words "entire Middle Fork". Sections 101, 201, and 301 of the Act amended subsection (a) by adding paragraphs (13) through (15). The 1976 Act does not appear herein.

1975 Amendment. Section 3(a) of the Act of December 31, 1975 (Public Law 94-199, 89 Stat. 1117) amended subsection (a) by adding paragraphs (11) and (12). The not appear herein.

1974 Amendment. Section 1(a) of the Act

of May 10, 1974, Public Law 93-279, 88 Stat. 122, amended subsection (a) by adding paragraph (10).

1972 Amendment. Section 2 of the Act of October 25, 1972 (Public Law 92-560, 86 Stat. 1174) amended subsection (a) by adding paragraph (9). The 1972 Act does not appear herein.

Reference in the Text. The Act establishing the Delaware Water Gap National Recreation Area, referred to in paragraph (20) of subsection (a) of the text, is the Act of September 1, 1965 (Public Law 89-159, 79 Stat. 612). The Act does not appear herein.

Reference in the Text. Section 704(c) of the National Parks and Recreation Act of 1978 (Act of November 10, 1978, Public Law 95-625, 92 Stat. 3467, 3524) referred to in paragraph (19) of subsection (a) of the text, outlines the requirements for a management plan for the Upper Delaware River. The Act does not appear herein.

Reference in the Text. The February 1944 treaty between the United States and Mexico, referred to in paragraph (17) of subsection (a) of the text, appears in Volume II at page 750.

(b) [Establishment of boundaries—Classification—Development plans.]—The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from October 2, 1968 (except where a different date is provided in subsection (a) of this section), establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 2, subsection (b) of this Act best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives. (82 Stat. 907; § 2, Act of October 25, 1972, 86 Stat. 1174; § 1(a), Act of May 10, 1974, 88 Stat. 122; § 3(a), Act of December 31, 1975, 89 Stat. 1117; § 101, § 201, § 301, § 601, Act of October 12, 1976, 90 Stat. 2327, 2329, 2330; §§ 701-704(a), 705-708, 755, 763(a), Act of November 10, 1978, 92 Stat. 3521-3523, 3527-3529, 3533; § 401(p)(1), Act of October 12, 1979, 93 Stat. 666; § 9(a), Act of July 23, 1980, 94 Stat. 952; § 16, Act of September 8, 1980, 94 Stat. 1137; §§ 601-603, Act of December 2, 1980, 94 Stat. 2412-2414; Act of December 23, 1980, 94 Stat. 3370; 16 U.S.C. § 1274)

EXPLANATORY NOTE

1978 Amendment. Section 763(a) of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3533) amended subsection (b) by inserting the parenthetical phrase "(except where a different date is provided in subsection (a) of this section)" following "one year from October 2, 1968". The 1978 Act does not appear herein.

Sec. 4.(a) [Proposals for additions to system—Report required.]—The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his rec-

ommendations and proposals with respect to the designation of each such river or section thereof under this Act. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in section 5, subsection (a)(1)-(27) of this Act no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers (i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and (ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 et seq.)

Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system. Each such report shall be printed as a Senate or House document.

EXPLANATORY NOTES

1975 Amendment. Section 1(d) of the Act of January 3, 1975 (Public Law 93-621, 88 Stat. 2096) amended subsection (a) by designating the provision relating to the developments, which, if undertaken, would render the rivers unsuitable for inclusion in the system as clause (i) and by adding clause (ii). The 1975 Act does not appear herein.

1974 Amendment. Section 1(b) (1) of the Act of May 10, 1974 (Public Law 93-279, 88 Stat. 122) amended subsection (a) by: deleting provisions for submission of proposals to the President and Congress and substituting in lieu thereof provisions requiring submission of reports to the President on the suitability for addition to the system of rivers designated by Congress as potential additions to such system and submission by the President of recommendations and proposals to Congress; deleting the reference to section 2(b) of this Act; adding the provisions that studies of rivers named in section 5(a) of this Act be completed by October 2, 1978, and that priority be given to rivers that would be unsuitable for the system if development were undertaken; and substantially incorporating the existing provisions in the second paragraph with minor changes. The 1974 Act does not appear herein.

(b) [Submission of report to other agencies.]—Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to

the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Secretary of Energy, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

EXPLANATORY NOTE

1976 Amendment. Section 501 of the Act of October 12, 1976 (Public Law 94-486, 90 Stat. 2330) amended subsection (b) by deleting the last sentence thereof. The sentence deleted read as follows: "No river or portion of any river shall be added to the national wild and scenic rivers system subsequent to enactment of this Act until the close of the next full session of the State legislature, or legislatures in case more than one State is involved, which begins following the submission of any recommendation to the President with respect to such addition as herein provided." The 1976 Act does not appear herein.

(c) [Secretary of Interior to consult with other agencies prior to decision.]—Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of a State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Secretary of Energy, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register. (82 Stat. 909; § 1(b)(1), Act of May 10, 1974, 88 Stat. 122; § 1(d), Act of January 3, 1975, 88 Stat 2096; § 501, Act of October 12, 1976, 90 Stat. 2330; § 301(b), Act of August 4, 1977, 91 Stat. 577, 16 U.S.C. § 1275)

EXPLANATORY NOTE

Transfer of Function. "Secretary of Energy" was substituted for "Chairman of the Federal Power Commission" in subsections (b) and (c) pursuant to section 301(b) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 577). Extracts from the 1977 Act appear in Volume IV in chronological order.

Sec. 5. (a) [Potential additions to system.]—The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

(1) Allegheny, Pennsylvania: The segment from its mouth to the town of East Brady, Pennsylvania.

(2) Bruneau, Idaho: The entire main stem.

(3) Buffalo, Tennessee: The entire river.

(4) Chattooga, North Carolina, South Carolina, and Georgia: The entire river.

(5) Clarion, Pennsylvania: The segment between Ridgway and its confluence with the Allegheny River.

(6) Delaware, Pennsylvania and New York: The segment from Hancock, New York, to Matamoras, Pennsylvania.

(7) Flathead, Montana: The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir.

(8) Gasconade, Missouri. The entire river.

(9) Illinois, Oregon: The entire river.

(10) Little Beaver, Ohio: The segment of the North and Middle Forks of the Little Beaver River in Columbiana County from a point in the vicinity of Negly and Elkton, Ohio, downstream to a point in the vicinity of East Liverpool, Ohio.

(11) Little Miami, Ohio: That segment of the main stem of the river, exclusive of its tributaries, from a point at the Warren-Clermont County line at Loveland, Ohio, upstream to the sources of Little Miami including North Fork.

(12) Maumee, Ohio and Indiana: The main stem from Perrysburg, Ohio, to Fort Wayne, Indiana, exclusive of its tributaries in Ohio and inclusive of its tributaries in Indiana.

(13) Missouri, Montana: The segment between Fort Benton and Ryan Island.

(14) Moyie, Idaho: The segment from the Canadian border to its confluence with the Kootenai River.

(15) Obed, Tennessee: The entire river and its tributaries, Clear Creek and Daddys Creek.

(16) Penobscot, Maine: Its east and west branches.

(17) Pere Marquette, Michigan: The entire river.

(18) Pine Creek, Pennsylvania: The segment from Ansonia to Waterville.

(19) Priest, Idaho: The entire main stem.

(20) Rio Grande, Texas: The portion of the river between the west boundary of Hudspeth County and the east boundary of Terrell County on the United States side of the river: *Provided,* That before undertaking any study of this potential scenic river, the Secretary of the Interior shall determine, through the channels of appropriate executive agencies, that Mexico has no objection to its being included among the studies authorized by this Act.

(21) Saint Croix, Minnesota and Wisconsin: The segment between the dam near Taylors Falls and its confluence with the Mississippi River.

(22) Saint Joe, Idaho: The entire main stem.

(23) Salmon, Idaho: The segment from the town of North Fork to its confluence with the Snake River.

(24) Skagit, Washington: The segment from the town of Mount Vernon to and including the mouth of Bacon Creek; the Cascade River between its mouth and the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the Glacier Peak Wilderness Area boundary at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the Glacier Peak Wilderness Area boundary.

(25) Suwannee, Georgia and Florida: The entire river from its source in the Okefenokee Swamp in Georgia to the gulf and the outlying Ichetucknee Springs, Florida.

(26) Upper Iowa, Iowa: The entire river.

(27) Youghiogheny, Maryland and Pennsylvania: The segment from Oakland, Maryland, to the Youghiogheny Reservoir, and from the Youghiogheny Dam downstream to the town of Connellsville, Pennsylvnia.

(28) American, California: The North Fork from the Cedars to the Auburn Reservoir.

(29) Au Sable, Michigan: The segment downstream from Foot Dam to Oscoda, and upstream from Loud Reservoir to its source, including its principal tributaries and excluding Mio and Bamfield Reservoirs.

(30) Big Thompson, Colorado: The segment from its source to the boundary of Rocky Mountain National Park.

(31) Cache la Poudre, Colorado: Both forks from their sources to their confluence, thence the Cache la Poudre to the eastern boundary of Roosevelt National Forest.

(32) Cahaba, Alabama: The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with United States Highway 80 west of Selma.

(33) Clark's Fork, Wyoming: The segment from the Clark's Fork Canyon to the Crandall Creek Bridge.

(34) Colorado, Colorado and Utah: The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

(35) Conejos, Colorado: The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

(36) Elk, Colorado: The segment from its source to Clark.

(37) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

(38) Green, Colorado: The entire segment within the State of Colorado.

(39) Gunnison, Colorado: The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

(40) Illinois, Oklahoma: The segment from Tenkiller Ferry Reservoir upstream to the Arkansas-Oklahoma border, including the Flint and Barren Fork Creeks.

(41) John Day, Oregon: The main stem from Service Creek Bridge (at river mile 157) downstream to Tumwater Falls (at river mile 10).

(42) Kettle, Minnesota: The entire segment within the State of Minnesota.

(43) Los Pinos, Colorado: The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

(44) Manistee, Michigan: The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

(45) Nolichuckey, Tennessee and North Carolina: The entire main stem.

(46) Owyhee, South Fork, Oregon: The main stem from the Oregon-Idaho border downstream to the Owyhee Reservoir.

(47) Piedra, Colorado: The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 160.

(48) Shepaug, Connecticut: The entire river.

(49) Sipsey Fork, West Fork, Alabama: The segment, including its tributaries, from the impoundment formed by the Lewis M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

(50) Snake, Wyoming: The segment from the southern boundaries of Teton National park to the entrance to Palisades Reservoir.

(51) Sweetwater, Wyoming: The segment from Wilson Bar downstream to Spring Creek.

(52) Tuolumne, California: The main river from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

(53) Upper Mississippi, Minnesota: The segment from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka.

(54) Wisconsin, Wisconsin: The segment from Prairie du Sac to its confluence with the Mississippi River at Prairie du Chien.

(55) Yampa, Colorado: The segment within the boundaries of the Dinosaur National Monument.

(56) Dolores, Colorado: The segment of the main stem from Rico upstream to its source, including its headwaters; the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem; and the segment from the west boundary, section 2, township 38 north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from one mile above Highway 90 to the confluence of the San Miguel River.

(57) Snake, Washington, Oregon, and Idaho: The segment from an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Willamette meridian, downstream to the town of Asotin, Washington.

(58) Housatonic, Connecticut: The segment from the Massachusetts-Connecticut boundary downstream to its confluence with the Shepaug River.

(59) Kern, California: The main stem of the North Fork from its source to Isabella Reservoir excluding its tributaries.

(60) Loxahatchee, Florida: The entire river including its tributary, North Fork.

(61) Ogeechee, Georgia: The entire river.

(62) Salt, Arizona: The main stem from a point on the north side of the river intersected by the Fort Apache Indian Reservation boundary (north of Buck Mountain) downstream to Arizona State Highway 288.

(63) Verde, Arizona: The main stem from the Prescott National Forest boundary near Paulden to the vicinity of Table Mountain, approximately 14 miles above Horseshoe Reservoir, except for the segment not included in the national forest between Clarkdale and Camp Verde, North segment.

(64) San Francisco, Arizona: The main stem from confluence with the Gila upstream to the Arizona-New Mexico border, except for the segment between Clifton and the Apache National Forest.

(65) Fish Creek, New York: The entire East Branch.

(66) Black Creek, Mississippi: The segment from Big Creek Landing in Forrest County downstream to Old Alexander Bridge Landing in Stone County.

(67) Allegheny, Pennsylvania: The main stem from Kinzua Dam downstream to East Brady.

(68) Cacapon, West Virginia: The entire river.

(69) Escatawpa, Alabama and Mississippi: The segment upstream from a point approximately one mile downstream from the confluence of the Escatawpa River and Jackson Creek to a point where the Escatawpa River is joined by the Yellowhouse Branch in Washington County, Alabama, near the town of Deer Park, Alabama; and the segment of Brushy Creek upstream from its confluence with the Escatawpa to its confluence with Scarsborough Creek.

(70) Myakka, Florida: The segment south of the southern boundary of the Myakka River State Park.

(71) Soldier Creek, Alabama: The segment beginning at the point where Soldier Creek intersects the south line of section 31, township 7 south, range 6 east, downstream to a point on the south line of section 6, township 8 south, range 6 east, which point is 1,322 feet west of the south line of section 5, township 8 south, range 6 east in the county of Baldwin, State of Alabama.

(72) Red, Kentucky: The segment from Highway numbered 746 (also known as Spradlin Bridge) in Wolf County, Kentucky, downstream to the point where the river descends below seven hundred feet above sea level (in its normal flow) which point is at the Menifee and Powell County line just downstream of the iron bridge where Kentucky Highway numbered 77 passes over the river.

(73) Bluestone, West Virginia: From its headwaters to its confluence with the New.

(74) Gauley, West Virginia: Including the tributaries of the Meadow and the Cranberry, from the headwaters to its confluence with the New.

(75) Greenbrier, West Virginia: From its headwaters to its confluence with the New.

(76) Birch, West Virginia: The main stem from the Cora Brown Bridge in Nicholas County to the confluence of the river with the Elk River in Braxton County.

(77) Colville, Alaska.

(78) Etivluk-Nigu, Alaska.

(79) Utukok, Alaska.

(80) Kanektok, Alaska.

(81) Kisaralik, Alaska.

(82) Melozitna, Alaska.

(83) Sheenjek (lower segment), Alaska.

(84) Situk, Alaska.

(85) Porcupine, Alaska.

(86) Yukon (Ramparts section), Alaska.

(87) Squirrel, Alaska.

(88) Koyuk, Alaska.

EXPLANATORY NOTES

1980 Amendments. Section 102 (a) of the Act of March 5, 1980 (Public Law 96-199, 94 Stat. 68) amended subsection (a) by adding paragraph (76). The 1980 Act does not appear herein.

1980 Amendment. Section 604(a) of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2415) amended subsection (a) by adding paragraphs (77) through (88). The 1980 Act does not appear herein.

1978 Amendments. Sections 721 through 734 of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3530 through 3532) amended subsection (a) by adding paragraphs (59) through (72) and section 1108 of that Act amended subsection (a) by adding paragraphs (73) through (75). The 1978 Act does not appear herein.

1976 Amendments. Section 701 of the Act of October 12, 1976 (Public Law 94-486, 90 Stat. 2330) amended subsection (a) by deleting the words "including the tributaries and headwaters on national forest lands" which had followed "Colorado Highway 160" and section 401 of that Act amended subsection (a) by adding paragraph (58). The 1976 Act does not appear herein.

1975 Amendment. Section 1(a) of the Act of January 3, 1975 (Public Law 93-621, 88 Stat. 2094) amended subsection (a) by adding paragraphs (29) through (56). The 1975 Act does not appear herein.

1975 Amendment. Section 5(a) of the Act of December 31, 1975 (Public Law 94-199, 89 Stat. 1118) amended subsection (a) by adding paragraph (57). The 1975 Act does not appear herein.

(b) [Study of potential additions—Time limits—Report to the President and Congress.]—(1) The studies of rivers named in subparagraphs (28) through (55) of subsection (a) of this section shall be completed and reports thereon submitted by not later than October 2, 1979: *Provided,* That with respect to the rivers named in subparagraphs (33), (50), and (51), the Secretaries shall not commence any studies until (i) the State legislature has acted with respect to such rivers or (ii) one year from January 3, 1975, whichever is earlier.

(2) The study of the river named in subparagraph (56) of subsection (a) of this section shall be completed and the report thereon submitted by not later than January 3, 1976.

(3) The studies of the rivers named in paragraphs (59) through (76) of subsection (a) of this section shall be completed and reports submitted thereon not later than five full fiscal years after November 10, 1978. The study of rivers named in paragraphs (62) through (64) of subsection (a) of this section shall be completed and the report thereon submitted by not later than April 1981.

(4) There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (28) through (56) such sums as may be necessary, but not more than $4,060,000. There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (59) through (76) such sums as may be necessary.

(5) The studies of the rivers in paragraphs (77) through (88) shall be completed and reports transmitted thereon not later than three full fiscal years from December 2, 1980. For the rivers listed in paragraphs (77), (78), and (79) the studies prepared and transmitted to the Congress pursuant to section 105 (c) of the Naval Petroleum Reserves Production Act of 1976 (Public Law 94-258) shall satisfy the requirements of this section.

(6) Studies of rivers listed in paragraphs (80) and (81) shall be completed, and reports submitted within and not later than the time when the Bristol Bay Cooperative Region Plan is submitted to Congress in accordance with section 1204 of the Alaska National Interest Lands Conservation Act.

EXPLANATORY NOTES

1980 Amendments. Section 102(b) of the Act of March 5, 1980 (Public Law 96-199, 94 Stat. 68) amended subsection (b) by substituting "(76)" for "(75)" in paragraphs (3) and (4). Section 604(b) of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2415) amended subsection (b) by adding paragraphs (5) and (6). Neither 1980 Act appears herein.

1979 Amendment. Section 404(a) of the Act of October 12, 1979, Public Law 96-87, 93 Stat. 667, amended subsection (b) by substituting "paragraphs (59) through (75)" for "paragraphs (59) through (72)" in paragraph (3) and section 404(b) of the 1979 Act amended section 5(b) by substituting "subparagraphs (59) through (75)" for "subparagraphs (59) through (74)" in paragraph (4). The 1979 Act does not appear herein.

1978 Amendments. Section 736 of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3532) amended subsection (b) by adding paragraph (3) as it appears above. Section 735 of that Act amended Subsection (b) by redesignating former paragraph (3) as paragraph (4) and by increasing the appropriations authorization from $2,175,000 to $4,060,000. The 1978 Act does not appear herein.

Reference in the Text. Section 105(c) of the Naval Petroleum Reserves Production Act of 1976 (Act of April 5, 1976, 90 Stat. 305) referred to in subsection (b)(5) of the text, directs the President to determine the best procedures for developing, producing, and transporting oil from reserves in Alaska. The 1976 Act does not appear herein.

Reference in the Text. Reference is made in section 5(b)(6) of the text to section 1204 of the Alaska National Interest Lands Act (Act of December 2, 1980, Public Law 96-487, 94 Stat. 2470). However, that Act was enacted without a section 1204. It is probable that Congress intended to refer to section 1203 of the Act, which specifically relates to the Bristol Bay Cooperative Region Plan referred to in the text. The 1980 Act does not appear herein.

(c) [Cooperation with state agencies.]—The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on

jointly with such agencies if request for such joint study is made by the State and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d) [Additional criteria for water and land resources planning.]—In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved. (82 Stat. 910; § 1(b)(2), Act of May 10, 1974, 88 Stat. 123; § 1(a), (b), Act of January 3, 1975, 88 Stat. 2094, 2095; § 5(a), Act of December 31, 1975, 89 Stat. 1118; § 401, § 701, Act of October 12, 1976, 90 Stat 2330; §§ 721-736, title XI, § 1108, Act of November 10, 1978, 92 Stat. 3530-3532, 3547; § 404, Act of October 12, 1979, 93 Stat. 667; § 102, Act of March 5, 1980, 94 Stat. 68; § 604, Act of December 2, 1980, 94 Stat 2415; 16 U.S.C. § 1276)

EXPLANATORY NOTE

1975 Amendment. Section 1(b) of the Act of January 3, 1975 (Public Law 93-621, 88 Stat. 2094) amended section 5 by: adding the present subsection (b); redesignating the former subsection (b) as (c); and redesignating fhe former subsection (c) as (d). The 1975 Act does not appear herein.

1974 Amendment. Section 1(b)(2) of the Act of May 10, 1974 (Public Law 93-279, 88 Stat. 123) amended section 5 by: redesignating subsection (c) as (b) incorporating the former subsection (b) relating to the study of rivers named in subsection (a) into section 4(a), and redesignating subsection (d) as (c). The 1974 Act does appear herein.

Sec. 6. (a) [Acquisition of lands for inclusions in system—Limitations.]—The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 3 of this Act, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation, and lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this Act. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from

other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this Act.

(b) [Condemnation actions.]—If 50 per centum or more of the entire acreage within a federally administered wild, scenic or recreational river area is owned by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) [Local zoning ordinances.]—Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) [Exchange of property.]—The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefor, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) [Transfer of jurisdiction over Federal land.]—The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress in [sic] authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this Act. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this Act within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) [Donations.]—The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g) [Owner of improved property may reserve rights.]—(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this Act. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property", as used in this Act, means a detached, one-family dwelling (hereinafter referred to as "dwelling"), the construction of which was begun before January 1, 1967 (except where a different date is specifically provided by law with respect to any particular river), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated. (82 Stat. 912; § 763(b), Act of November 10, 1978, 92 Stat. 3533; 16 U.S.C. § 1277)

EXPLANATORY NOTE

1978 Amendment. Section 763(b) of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3533) amended subsection (g)(3) by inserting after the words "January 1, 1967" the parenthetical phrase "(except where a different date is specifically provided by law with respect to any particular river)". The 1978 Act does not appear herein.

Sec. 7. (a) [Water resource projects on system rivers limited.]—The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild

and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the Untied States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act. Any license heretofore or hereafter issued by the Federal Energy Regulatory Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

EXPLANATORY NOTE

1976 Amendment. Section 1(2) of the Act of September 11, 1976 (Public Law 94-407, 90 Stat. 1238) amended subsection (a) by adding the provision relating to licenses issued affecting the New River of North Carolina. The 1976 Act does not appear herein.

(b) [Construction projects on rivers designated for potential addition to system.]—The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, (a) of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the ten-year period following October 2, 1968, or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic

rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided*, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 2 (a)(ii) of this Act, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of approval of this Act. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

EXPLANATORY NOTES

1975 Amendment. Section 1(c) of the Act of January 3, 1975 (Public Law 93-621, 88 Stat. 2096) amended subsection (b) by adding to clause (i) the proviso that if any Act provides a time period for study in excess of the three fiscal year period, that period shall be substituted for the three complete fiscal year period provision of clause (i). The 1975 Act does not appear herein.

1974 Amendment. Section 1(b)(3) of the Act of May 10, 1974 (Public Law 93-279, 88 Stat. 123) amended subsection (b) by striking the former provisions in clause (i) and incorporating in lieu thereof the present provisions

in the same clause as they appear above. Section 1(b)(4) of the Act amended subsection (b) by deleting in clause (ii) the words "which is recommended to the President and the Congress for inclusion in the national wild and scenic river system, is necessary" and inserting in lieu thereof the words "the report for which is submitted to the President and the Congress, is necessary". The 1974 Act does not appear herein.

Reference in the Text. Part I of the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063) as amended, referred to in subsections (a) and (b) of the text, appears in Volume I at p. 262. Extracts from Parts II and III appear in Volume I at p. 527.

(c) [Federal Energy Regulatory Commission and other Federal agencies shall inform Secretary of proceedings, studies, and other activities which may affect system rivers.]—The Federal Energy Regulatory Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5(a) of this Act. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) [Not applicable to grants under Land and Water Conservation Fund Act of 1965.]—Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 460*l*-4 et seq.). (82 Stat. 913; § 1(b)(3), (4), Act of May 10, 1974, 88 Stat. 123; § 1(c), Act of January 3, 1975, 88 Stat. 2096, § 1(2), Act of September 11, 1976, 90 Stat. 1238; § 402 (a)(1)(A), Act of August 4, 1977, 91 Stat 583; 16 U.S.C. § 1278)

EXPLANATORY NOTE

Reference in the Text. The Land and Water Conservation Fund Act of 1965, referred to in subsection (d) of the text, appears in Volume III at p. 1785.

Sec. 8. [Withdrawal of certain public lands from entry.]—(a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is designated in section 3 of this Act or which is designated after October 2, 1968, for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 5(a) of this Act are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 7(b) (b) of this Act. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through

(88) of section 5(a) of this Act are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the United States for the periods specified in section 7(b) of this Act. (82 Stat. 915; § 606(c), Act of December 2, 1980, 94 Stat. 2417; 16 U.S.C. § 1279)

EXPLANATORY NOTES

1980 Amendment. Section 606 of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2417) amended subsection (b) by inserting the provisions withdrawing, subject to valid existing rights, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank, of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a), from entry, sale, State selection or other disposition under the public land laws for the periods specified in section 7(b). The 1980 Act does not appear herein.

Reference in the Text. The Alaska Native Claims Settlement Act (Public Law 92-203, 85 Stat. 688) referred to in subsection (b) of the text, is designed to settle land claims of natives in Alaska. The Act does not appear herein.

Sec. 9. (a) [Mining laws unaffected—Exceptions.]—Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that—

(i) all prospecting, mining operations, and all other activities on mining claims which, in the case of a component of the system designated in section 3 of this Act, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this Act or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this Act;

(ii) subject to valid existing rights, the perfection of, issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior or, in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this Act or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the component in question.

(b) [Withdrawals of certain lands.]—The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 5(a) of this Act are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 7(b) of this Act. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance or leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) though (88) of section 5(a) of this Act are hereby withdrawn subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 7(b), of this Act. (82 Stat. 915; § 606(b), Act of December 2, 1980, 94 Stat. 2416; 16 U.S.C. § 1280)

EXPLANATORY NOTE

1980 Amendment. Section 606(b) of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2416), amended subsection (b) by inserting the provision withdrawing, subject to valid existing rights, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel or both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a) of the Act, from all forms of appropriations under the mining laws and operation of the mineral leasing laws during the periods specified in section 7(b) of the Act. The 1980 Act does not appear herein.

Sec. 10. [Administration of system.]—(a) Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Act of September 3, 1964 (78 Stat. 890; 16 U.S.C., ch. 23), shall be subject to the provisions of both the Wilderness Act and this Act with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of these Acts the more restrictive provisions shall apply.

(c) Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park

Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this Act and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of these Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this Act.

(d) The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this Act.

(e)The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands. (82 Stat. 916; 16 U.S.C. § 1281.)

EXPLANATORY NOTE

Reference in the Text. The Act of September 3, 1964 (78 Stat. 890), referred to in subsection (b) of the text, is the Wilderness Act, and appears in Volume III at page 1777.

Sec. 11. [Federal assistance in formulation of statewide outdoor recreation plans]—(a) The Secretary of the Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) needs and opportunities for establishing State and local wild, scenic and recreational areas. He shall also, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49) provide technical assistance and advice to, and cooperate with, States, political subdivisions, and private interests, including nonprofit organizations, with respect to establishing such wild, scenic and recreational river areas.

(b) The Secretaries of Agriculture and of Health and Human Services shall likewise, in accordance with the authority vested in them assist, advise, and cooperate with State and local agencies and private interests with respect to establishing such wild, scenic and recreational river areas. (82 Stat. 916; § 509(b), Act of October 17, 1979, 93 Stat. 695; 16 U.S.C. § 1282.)

EXPLANATORY NOTES

Change of Name. "Health and Human Services" was substituted for "Health, Education, and Welfare" in subsection (b) pursuant to section 509(b) of the Act of October 17, 1979, Public Law 96-88, 93 Stat. 695.

References in the Text. The Act of May 28, 1963 (77 Stat. 49), referred to in subsection (a) of the text, provides for the coordination of recreation programs, and appears in Volume III at page 1711. The Land and Water Conservation Fund Act of 1965, also referred to in subsection (a) of the text, appears in Volume III at page 1785.

Sec. 12. (a) [Review of existing Federal plans.]—The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion in accordance with section 2(a)(ii), section 3(a), or section 5 (a) of this Act, shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii) of this Act. Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

EXPLANATORY NOTE

1978 Amendment. Section 762 of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3533) amended subsection (a) by: substituting the provision requiring action to be taken by the Secretaries and heads of agencies for the prior provision requiring review by such officials; making the provision applicable to rivers included within the system; incorporating references to rivers covered in sections 2(a)(ii) and 3(a) of the Act; and requiring cooperative agreements with appropriate State or local officials for planning and administration of Federal lands within boundaries of rivers approved under section 2(a)(ii) of the Act. The 1978 Act does not appear herein.

(b) [Existing contracts unchanged.]—Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without consent of said party.

(c) [Pollution control.]—The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Secretary of the Interior and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river. (82 Stat. 917; § 762, Act of November 10, 1978, 92 Stat. 3533; 16 U.S.C. § 1283.)

Sec. 13. [Existing law unaffected.]—(a) Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws

and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) The jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreation river area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.

(d) The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.

(e) Nothing contained in this Act shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided,* That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act. (82 Stat. 917; 16 U.S.C. § 1284.)

Sec. 14. [Donated easements.]—The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26 United States Code, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift. (82 Stat 918; 16 U.S.C. § 1285.)

EXPLANATORY NOTE

Reference in the Text. Title 26 of the U.S. Code, referred to in the text, contains the Internal Revenue Code. The Internal Revenue Code does not appear herein.

Sec. 14A. [Lease of Federal lands within system.]—(a) Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers System and which has been acquired by the Secretary under this Act. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act.

(b) Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States. (Added by Act of November 10, 1978, § 764, 92 Stat. 3534; 16 U.S.C. § 1285a.)

EXPLANATORY NOTE

1978 Amendment. Section 764 of the Act of November 10, 1978 (Public Law 95-625, 92 Stat. 3534) amending this Act by adding section 14A. The 1978 Act does not appear herein.

Sec. 15. [Establishment of boundaries for certain component rivers in Alaska—Withdrawal of minerals.]—Notwithstanding any other provision to the contrary in sections 3 and 9 of this Act, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of section 3(a) of this Act—

(1) the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and

((2) the withdrawal made by paragraph (iii) of section 9(a) of this Act shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act. (Added by Act of December 2, 1980, § 606(a) 94 Stat. 2416; 16 U.S.C. § 1285b.)

EXPLANATORY NOTES

1980 Amendment. Section 606(a) of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2416) amended this Act by adding section 15 and redesignated former section 15 as section 16. The 1980 Act does appear herein.

Reference in the Text. The Alaska National Interest Lands Conservation Act, Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2371) referred to in the text, is designed to protect the nationally significant cultural, natural, scenic, wildlife, and other values of lands in Alaska. The 1980 Act does not appear herein.

Sec. 16. [Definitions.]—As used in this Act, the term—

(a) "River" means a flowing body of water or estuary or a section, portion,

or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement. (82 Stat. 918; § 1(c), Act of May 10, 1974, 88 Stat. 123; § 606(a), Act of December 2, 1980, 94 Stat. 2416; 16 U.S.C. § 1286.)

EXPLANATORY NOTES

1980 Amendment. Section 606(a) of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2416) redesignated the former section 15 as section 16 and redesignated former section 16 as section 17. The 1980 Act does not appear herein.

1974 Amendment. Section 1(c) of the Act of May 10, 1974 (Public Law 93-279, 88 Stat. 123) amended subsection (c) by deleting "for the purposes of protecting the scenic view from the river" and inserting in lieu thereof "within the authorized boundaries of the wild and scenic river system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area". The 1974 Act does not appear herein.

* * * * *

EXPLANATORY NOTE

Legislative History. S. 119, Public Law 90-542 in the 90th Congress. Reported in Senate from Interior and Insular Affairs August 4, 1967; S. Rept. No. 491. Passed Senate August 8, 1967. Passed House, amended, September 12, 1968. Senate asks for a conference September 16, 1968. House agrees to a conference September 16, 1968. Conference report filed September 24, 1968; H.R. Rept. No. 1917. House agrees to conference report September 25, 1968. Senate agrees to conference report September 26, 1968.

PALMETTO BEND PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain stage 1 and to acquire lands for stage 2 of the Palmetto Bend reclamation project, Texas, and for other purposes. (Act of October 12, 1968, Public Law 90-562, 82 Stat. 999)

[Sec. 1. Palmetto Bend project authorized.]—The Secretary of the Interior is authorized to construct, operate, and maintain the first stage and to acquire lands for the second stage of the Palmetto Bend Federal reclamation project, Texas, in accordance with the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto) for the purposes of storing, regulating, and furnishing water for municipal and industrial use, conserving and developing fish and wildlife resources, and enhancing outdoor recreation opportunities. The stage 1 development of the project shall consist of the following principal works: Palmetto Bend Dam and Reservoir on the Navidad River near Edna, Texas, and recreation facilities. (82 Stat. 999)

NOTES OF OPINIONS

Environmental impact statements 1-6
Adequacy 1
Construction during preparation 2
When required 3

1. Environmental impact statements—Adequacy

The National Environmental Policy Act does not demand that every Federal decision be verified by reduction to mathematical absolutes for insertion into a precise formula. Rather, by giving the decisionmaker and other readers enough detail concerning all of the costs and benefits to permit a reasoned evaluation and decision, the statement satisfies the Act's requirement that long-term environmental costs be weighed against immediate benefits. Thus, where the environmental impact statement for the first stage of the Palmetto Bend Project was found, in all other respects, sufficiently clear and comprehensive, there was no real reason for a mathematical decision as to a cost-benefit ratio. Moreover, a cost-benefit ratio was considered in the project's development in reports filed in 1962 and 1963 and in the Feasibility Report filed with Congress in February 1965. Finally, the responsibility of determining whether the United States can afford this project lies in the Congress which, based on the project's history, has already decided it is worth the money. *Sierra Club v. Morton,* 431 F. Supp. 11 (S.D. Tex. 1975).

The fact that there is a difference of scientific opinion among experts regarding the environmental impact of the first stage of the Palmetto Bend Project does not mean that the impact has been inadequately discussed in the Project's environmental impact statement, nor does such difference mean the statement's explanations must be disregarded. *Sierra Club v. Morton,* 431 F. Supp. 11 (S.D. Tex. 1975).

The environmental impact statement required for the first stage of the Palmetto Bend Project need not discuss remote and highly speculative consequences but should be sufficient to enable those who did not participate in compiling the statement to understand the factors involved and fully consider the significance of such factors. *Sierra Club v. Morton,* 431 F. Supp. 11 (S.D. Tex. 1975).

2.—Construction during preparation

Where the 28-page environmental impact statement for the first stage of the Palmetto Bend Project was being challenged in a lawsuit, the Bureau of Reclamation was not obligated to halt project construction while it prepared a revised, 142-page statement. Such a requirement might compromise the National Environmental Policy Act's goal of full disclosure in a situation where it was unclear whether a proposed change would merely require a supplement to the environmental im-

pact statement, in which case work could continue on the project, or a new environmental impact statement, which would provide more complete disclosure at the cost of a break in the project timetable. *Sierra Club v. Morton,* 431 F. Supp. 11 (S.D. Tex. 1975).

3.—When required

As the National Environmental Policy Act applies to all ongoing "major Federal actions," in considering whether an environmental impact statement is required for a project authorized before the Act became effective on January 1, 1970, the extent to which the project has been completed is a factor to be carefully weighed. Thus, an impact statement is required for the first stage of the Palmetto Bend Project, authorized in 1968, since, while land had been purchased and cleared and some roads and railroad tracks relocated, no construction had been commenced. *Sierra Club v. Morton,* 431 F. Supp. 11 (S.D. Tex. 1975).

Sec. 2. [Municipal and industrial water supply—Repayment period—Termination date—Interest rate.]—Costs of the project or any unit or stage thereof allocated to municipal and industrial water supply shall be repayable with interest, by the municipal and industrial water users over a period of not more than fifty years from the date that water is first delivered for that purpose, pursuant to contracts with municipal corporations, organizations, or other entities as defined in section 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187). Such contracts shall be precedent to the commencement of construction of the project. Contracts may be entered into with a qualified entity or entities pursuant to the provisions of this Act without regard to the last sentence of subsection 9(c) of the Reclamation Project Act of 1939, supra.

(b) If contracts for the repayment of all of the costs allocated to municipal and industrial water supply shall not have been executed within five years of the date of enactment of this Act, the authorization herein granted to the Secretary shall thereupon terminate.

(c) The interest rate used for computing interest during construction and interest on the unpaid balance of the costs of the project allocated to municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (82 Stat. 999)

EXPLANATORY NOTE

References in the Text. Section 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in subsection (a) of the text, defines "organization" as "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." The last sentence of subsection (c) of section 9 of the 1939 Act, referred to in subsection (a) of the text, reads: "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." The 1939 Act appears in Volume I at page 635.

Sec. 3. [Transfer of works—Credit—Permanent right to use of reservoir—Waiver of classification requirements.]—(a) The Secretary is authorized to transfer to a qualified contracting entity or entities the care, operation, and maintenance of the project works, and, if such transfer is made, to credit annually against the contractor's repayment obligation that portion of the year's joint operation and maintenance costs which, if the United States had continued to operate the project, would have been allocated to fish and wildlife and recreation purposes. Prior to assuming care, operation, and maintenance of the project works the contracting entity or entities shall be obligated to operate them in accordance with criteria established by the Secretary of the Interior with respect to fish and wildlife and recreation.

(b) Upon complete payment of the obligation assumed, the contracting entity or entities, their designee or designees, shall have a permanent right to use that portion of project reservoir capacity which is or may be allocated to municipal and industrial water supply purposes by the Secretary of the Interior, so long as the space designated for those purposes may be physically available, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the project as may be necessary due to sedimentation, subject, if the project is then operated by the United States, to payment to the United States of a reasonable annual charge to cover operation and maintenance costs and fair share of administrative costs applicable to the project.

(c) Expenditures for the Palmetto Bend project may be made without regard to the soil survey and land classification requirements of the Interior Department Appropriation Act of 1954 (67 Stat. 266). (82 Stat. 999)

EXPLANATORY NOTE

Reference in the Text. The soil survey and land classification requirements of the Interior Department Appropriation Act of 1954 (67 Stat. 266), referred to in subsection (c) of the text, provide that no appropriation shall be available for the initiation of construction of any project or any feature of a project until the Secretary certifies to Congress that an adequate soil survey and land classification has been made. This provision of the 1954 Act appears in Volume II at page 1115.

Sec. 4. [Fish and wildlife conservation and development—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Palmetto Bend project shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213). (82 Stat. 1000)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72, 16 U.S.C. § 460*l*-12 et seq.), referred to in the text, appears in Volume III at page 1820

Sec. 5. [Appropriation authorization.]—There is authorized to be appropriated for construction of the first stage of the Palmetto Bend reclamation project the sum of $34,100,000 (January 1967 prices), plus or minus

such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for the operation and maintenance of the first stage of the project. (82 Stat. 1000)

Sec. 6. [Appropriation authorization for acquisition of lands—Termination date.]—There is authorized to be appropriated for the acquisition of lands for the second stage of the Palmetto Bend reclamation project the sum of $2,700,000. If, within twenty years after the initial operation of stage 1 of the project, Congress has not authorized construction of stage 2, the lands acquired pursuant to this section shall be utilized or disposed of in accordance with the provisions of section 3 (b) (2) of the Federal Water Project Recreation Act (Act of July 9, 1965, 79 Stat. 214; 16 U.S.C. 4601-14(b) (2)). (82 Stat. 1000)

EXPLANATORY NOTES

Codification Omitted. This Act originally was codified at 43 U.S.C. §§ 616gggg to 616llll but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. H.R. 5117, Public Law 90-562 in the 90th Congress. Reported in House from Interior and Insular Affairs July 2, 1968; H.R. Rept. No. 1610. Passed House July 15, 1968. Reported in Senate from Interior and Insular Affairs September 26, 1968; S. Rept. No. 1591. Passed Senate October 1, 1968.

EXCHANGE OF LANDS IN SHASTA COUNTY

An act to authorize the Secretary of the Interior to exchange certain lands in Shasta County, California, and for other purposes. (Act of October 17, 1968; Public Law 90-591, 82 Stat. 1153)

[Sec. 1. Exchange of lands authorized—Appraisal.]—The Secretary of the Interior is authorized to convey to the Summit City Public Utility District, Shasta County, California, approximately 7.24 acres, more or less, and to accept from the district in exchange therefor 5.91 acres, more or less, of land located in section 26, township 33 north, range 5 west, Mount Diablo meridian, Shasta County, California, and further identified in the records of the Bureau of Reclamation, Department of the Interior, as parcels A and B, respectively. The properties so exchanged either shall be approximately equal in fair market value or if they are not approximately equal, shall be equalized by the payment of cash to the district or to the Secretary as required: *Provided,* That the Secretary shall order appraisals made of the fair market value of both parcels of land without consideration for any improvements thereon, with said appraisals to constitute final determinations of value: *Provided further,* That any cash payment received by the Secretary shall be credited to the funds available for construction or operation and maintenance of the Central Valley project and any disbursements made by him shall be made from said funds. (82 Stat. 1153)

Explanatory Notes

Purpose of the Act. The report of the Senate Committee on Interior and Insular Affairs states: "The purpose and need for this exchange is to provide for the continued use as a Little League ballpark that parcel which is presently leased by the district but owned by the United States." S. Rept. No. 1613, 90th Cong., 2d Sess. 1 (1968).

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 8781, Public Law 90-591 in the 90th Congress. Reported in House from Interior and Insular Affairs September 10, 1968; H.R. Rept. No. 1878. Passed House September 16, 1968. Reported in Senate from Interior and Insular Affairs October 4, 1968; S. Rept. No. 1613. Passed Senate October 7, 1968.

UPPER NIOBRARA RIVER COMPACT

An act to consent to the upper Niobrara River compact between the States of Wyoming and Nebraska. (Act of August 4, 1969, Public Law 91-52, 83 Stat. 86)

[Sec.1. Consent of Congress.]—The consent of Congress is given to the upper Niobrara River compact between the States of Wyoming and Nebraska. Such compact reads as follows:

"UPPER NIOBRARA RIVER COMPACT"

"The State of Wyoming, and the State of Nebraska, parties signatory to this compact (hereinafter referred to as Wyoming and Nebraska, respectively, or individually as a 'State', or collectively as 'States'), having resolved to conclude a compact with respect to the use of waters of the Niobrara River Basin, and being duly authorized by Act of Congress of the United States of America, approved August 5, 1953 (Public Law 191, 83rd Congress, 1st Session, Chapter 324, 67 Stat. 365) and the Act of May 29, 1958 (Public Law 85—427, 85th Congress, S.2557, 72 Stat. 147) and the Act of August 30, 1961 (Public Law 87–181, 87th Congress, S. 2245, 75 Stat. 412) and pursuant to the Acts of their respective Legislatures have, through their respective Governors, appointed as their Commissioners: For Wyoming, Earl Lloyd, Andrew McMaster, Richard Pfister, John Christian, Eugene P. Willson, H. T. Person, Norman B. Gray, E. J. Van Camp: For Nebraska, Dan S. Jones, Jr., who after negotiations participated in by W. E. Blomgren appointed by the President of the United States of America, have agreed upon the following articles:

"ARTICLE I.

"A. The major purposes of this compact are to provide for an equitable division or apportionment of the available surface water supply of the Upper Niobrara River Basin between the States; to provide for obtaining information on groundwater and underground water flow necessary for apportioning the underground flow by supplement to this compact; to remove all causes, present and future which might lead to controversies; and to promote interstate comity.

"B. The physical and other conditions peculiar to the Upper Niobrara River Basin constitute the basis for this compact; and neither of the States hereby concedes that this compact establishes any general principle or precedent with respect to any other interstate stream.

"C. Either State and all others using, claiming or in any other manner asserting any right to the use of the waters of the Niobrara River Basin under the authority of that State, shall be subject to the terms of this compact.

"ARTICLE II.

"A. The term 'Upper Niobrara River' shall mean and include the Nio-

brara River and its tributaries in Nebraska and Wyoming west of Range 55 West of the 6th P.M.

"B. The term 'Upper Niobrara River Basin' or the term 'Basin' shall mean that area in Wyoming and Nebraska which is naturally drained by the Niobrara River west of Range 55 West of the 6th P.M.

"C. Where the name of a State or the term 'State' or 'States' is used, they shall be construed to include any person or entity of any nature whatsoever using, claiming, or in any manner asserting any right to the use of the waters of the Niobrara River under the authority of that State.

"ARTICLE III.

"It shall be the duty of the two States to administer this compact through the official in each State who is now or may hereafter be charged with the duty of administering the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

"The States agree that the United States Geological Survey, or whatever Federal agency may succeed to the functions and duties of that agency, insofar as this compact is concerned, may collaborate with the officials of the States charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation, and publication of information necessary for the proper administration of this compact.

"ARTICLE IV.

"Each State shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gaging stations as are found necessary to administer this compact.

"ARTICLE V.

"A. Wyoming and Nebraska agree that the division of surface waters of the Upper Niobrara River shall be in accordance with the following provisions.

"1. There shall be no restrictions on the use of the surface waters of the Upper Niobrara River by Wyoming except as would be imposed under Wyoming law and the following limitations:

"(a) No reservoir constructed after August 1, 1957, and used solely for domestic and stock water purposes shall exceed 20 acre-feet in capacity.

"(b) Storage reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West of the 6th P.M. and from the main stem of Van Tassel Creek south of Section 27, Township 32 North, Range 60 West of the 6th P.M. shall not store in any water year (October 1 of one year to September 30 of the next year) more than a total of 500 acre-feet of water.

"(c) Storage in reservoirs with priority dates prior to August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West and from the main stem of Van Tassel Creek south of Section

27, Township 32 North, shall be made only during the period October 1 of one year to June 1 of the next year and at such times during the period June 1 to September 30 that the water is not required to meet the legal requirements by direct flow appropriations in Wyoming and in Nebraska west of Range 55 West. Where water is pumped from such storage reservoirs, the quantity of storage water pumped or otherwise diverted for irrigation purposes or other beneficial purposes from any such reservoir in any water year shall be limited to the capacity of such reservoir as shown by the records of the Wyoming State Engineer's Office, unless additional storage water becomes available during the period June 1 to September 30 after meeting the legal diversion requirements by direct flow appropriations in Wyoming and in Nebraska west of Range 55 West.

"(d) Storage in reservoirs with priority dates after August 1, 1957, and storing water from the main stem of the Niobrara River east of Range 62 West and the main stem of Van Tassel Creek south of Section 27, Township 32 North, shall be made only during the period October 1 of one year to May 1 of the next year and at such times during the period May 1, and September 30 that the water is not required for direct diversion by ditches in Wyoming and in Nebraska west of Range 55 West.

"(e) Direct flow rights with priority dates after August 1, 1957, on the main stem of the Niobrara River east of Range 62 West and Van Tassel Creek south of Section 27, Township 32 North, shall be regulated on priority basis with Nebraska rights west of Range 55 West, provided, that any direct flow rights for a maximum of 143 acres which may be granted by the Wyoming State Engineer with a priority date not later than July 1, 1961, for lands which had Territorial Rights under the Van Tassel No. 4 Ditch with a priority date of April 8, 1882, and the Van Tassel No. 5 Ditch with a priority date of April 18, 1882, shall be exempt from the provisions of this subsection (e).

"(f) All direct flow diversions from the main stem of the Niobrara River east of Range 62 West and from Van Tassel Creek south of Section 27, Township 32 North shall at all times be limited to their diversion rates as specified by Wyoming law, and provided that Wyoming laws relating to diversion of 'Surplus Water' (Wyoming Statutes, 1957, Sections 41–181 to 41–188 inclusive) shall apply only when the water flowing in the main channel of the Niobrara River west of Range 55 West is in excess of the legal diversion requirements of Nebraska ditches having priority dates before August 1, 1957.

"ARTICLE VI.

"A. Nebraska and Wyoming recognize that the future use of ground water for irrigation in the Niobrara River Basin may be a factor in the depletion of the surface flows of the Niobrara River, and since the data now available are inadequate to make a determination in regard to this matter, any apportionment of the ground water of the Niobrara River Basin

should be delayed until such time as adequate data on ground water of the basin are available.

"B. To obtain data on ground water, Nebraska and Wyoming, with the cooperation and advice of the United States Geological Survey, Ground-water Branch, shall undertake ground water investigations in the Niobrara River Basin in the area of the Wyoming-Nebraska State line. The investigations shall be such as are agreed to by the State Engineer of Wyoming and the Director of Water Resources of Nebraska, and may include such observation wells as the said two officials agree are essential for the investigations. Costs of the investigations may be financed under the cooperative ground water programs between the United States Geological Survey and the States, and the States' share of the costs shall be borne equally by the two States.

"C. The ground water investigations shall begin within one year after the effective date of this compact. Upon collection of not more than twelve months of ground water data Nebraska and Wyoming with the cooperation of the United States Geological Survey, shall make, or cause to be made, an analysis of such data to determine the desirability or necessity of apportioning the ground water by supplement to this compact. If, upon completion of the initial analysis, it is determined that apportionment of the ground water is not then desirable or necessary, reanalysis shall be made at not to exceed two-year intervals, using all data collected until such apportionment is made.

"D. When the results of the ground water investigations indicate that apportionment of ground water of the Niobrara River Basin is desirable, the two States shall proceed to negotiate a supplement to this compact apportioning the ground water of the Basin.

"E. Any proposed supplement to this compact apportioning the ground water shall not become effective until ratified by the legislatures of the two States and approved by the Congress of the United States.

"ARTICLE VII.

"The provisions of this compact shall remain in full force and effect until amended by action of the Legislatures of the Signatory States and until such amendment is consented to and approved by the Congress of the United States in the same manner as this compact is required to be ratified and consented to in order to become effective.

"ARTICLE VIII.

"Nothing in this compact shall be construed to limit or prevent either State from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of any of its provisions.

"ARTICLE IX.

"Nothing in this compact shall be deemed:

"A. To impair or affect any rights or powers of the United States, its

agencies, or instrumentations, in and to the use of the waters of the Upper Niobrara River Basin nor its capacity to acquire rights in and to the use of said waters; provided that, any beneficial uses of the waters allocated by this compact hereafter made within a State by the United States, or those acting by or under its authority, shall be taken into account in determining the extent of use within that State.

"B. To subject any property of the United States, its agencies, or instrumentalities to taxation by either State or subdivision thereof, nor to create an obligation on the part of the United States, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payment to any State or political subdivision thereof, State agency, municipality, or entity whatsoever in reimbursement for the loss of taxes.

"C. To subject any property of the United States, its agencies, or instrumentalities, to the laws of any State to an extent other than the extent to which these laws would apply without regard to the compact.

"D. To affect the obligations of the United States of America to Indians or Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

"ARTICLE X.

"Should a court of competent jurisdiction hold any part of this compact contrary to the constitution of any State or of the United States, all other severable provisions shall continue in full force and effect.

"ARTICLE XI.

"This compact shall become effective when ratified by the Legislatures of each of the signatory States and by the Congress of the United States.

"IN WITNESS WHEREOF, the Commissioners have signed this compact in triplicate original, one of which shall be filed in the archives of the United States of America and shall be deemed the authoritative original, and one copy of which shall be forwarded to the Governor of each of the signatory States.

"Done at the city of Cheyenne, in the State of Wyoming, this 26th day of October, in the year of our Lord, One Thousand and Nine Hundred Sixty Two 1962.

Commissioner for the State of Nebraska
s/Dan S. Jones, Jr.
Commissioners for the State of Wyoming
s/Earl Lloyd
s/Andrew McMaster
s/Richard Pfister
s/John Christian
s/Eugene P. Wilson
s/H. T. Person
s/Norman B. Gray
s/E. J. Van Camp

"I have participated in the negotiation of this compact and intend to report favorably thereon to the Congress of the United States.
s/W. E. Blomgren
Representative of the United States of America."

Sec. 2. [Reservation of rights.]—The right to alter, amend, or repeal this Act is reserved. (83 Stat. 91)

Sec. 3. [Rights of United States unaffected.]—Nothing in this Act shall be deemed to impair or affect any rights or powers of the United States, its agencies, instrumentalities, permittees, or licensees in, over, and to the use of the waters of the Upper Niobrara River Basin; nor to impair or affect their capacity to acquire rights in and to the use of said waters. (83 Stat. 91)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Consent to Negotiate Compact. The consent of Congress for the States of Wyoming and Nebraska to negotiate this compact was granted by the Act of August 3, 1953 (67 Stat. 365). The 1953 Act appears in Volume II at page 1117.

Legislative History. S. 38, Public Law 91-52 in the 91st Congress. Reported in Senate from Interior and Insular Affairs June 20, 1969; S. Rept. No. 91-265. Passed Senate June 24, 1969. Reported in House from Interior and Insular Affairs July 9, 1969; H.R. Rept. No. 91-359. Passed House July 21, 1969.

KENNEWICK DIVISION EXTENSION

An act to amend the Act of June 12, 1948 (62 Stat. 382) in order to provide for the construction, operation, and maintenance of the Kennewick division extension, Yakima project, Washington, and for other purposes. (Act of August 25, 1969, Public Law 91-66, 83 Stat. 106)

[Sec. 1. 1948 Act amended.]—The Act of June 12, 1948 (62 Stat. 382), is hereby amended as follows:

(a) Insert the words "and Kennewick division extension", after the words "Kennewick division" in section 1 and add the following items to the principal units listed in said section: "Kiona siphon" and "Relift pumping plants".

(b) Insert at the end of section 3 the following: "Costs of the Kennewick division extension allocated to irrigation which are determined by the Secretary to be in excess of the water users' ability to repay within a fifty-year repayment period following a ten-year development period, shall be charged to and returned to the reclamation fund in accordance with the provisions of section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707): *Provided,* That section 5 of this Act shall not be applicable to the revenues derived from the Federal Columbia River power system. Power and energy required for irrigation water pumping for the Kennewick extension shall be made available by the Secretary from the Federal Columbia River power system at charges determined by him." (83 Stat. 106)

EXPLANATORY NOTE

References in the Text. Section 2 of the Act of June 14, 1966, as amended by section 6 of the Act of September 7, 1966, provides for and declares the policy of Congress with respect to financial assistance to reclamation projects within the Pacific Northwest from net revenues of Federal Columbia River power systems. The Acts of June 14, 1966 and September 7, 1966 appear in Volume III at pages 1870 and 1886, respectively.

Sec. 2. [Surplus crops.]—No water shall be delivered to any water user on the Kennewick division extension for a period of ten years from the date of enactment of this authorizing Act for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (83 Stat. 106)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C.

§1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. §1301(b)(10). Neither Act appears herein.

Sec. 3. [Appropriation authorization.]—There are authorized to be appropriated for the new works associated with the Kennewick division extension $6,735,000 (January 1969 prices), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein, as shown by engineering cost indexes, and, in addition, such sums as may be required to operate and maintain the extension. (83 Stat. 106)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 742, Public Law 91-66 in the 91st Congress. Reported in Senate from Interior and Insular Affairs March 20, 1969; S. Rept. No. 91-98. Passed Senate March 24, 1969. Reported in House from Interior and Insular Affairs June 5, 1969; H.R. Rept. No. 91-287. Passed House, amended, June 19, 1969. Senate agrees to House amendment August 12, 1969.

RELIEF OF ADRIANCE, ET AL.

An act for the relief of certain civilian employees and former civilian employees of the Bureau of Reclamation. (Act of September 26, 1969, Private Law 91-45, 83 Stat. 882)

[Sec. 1. Relief of liability—Refund if repayment made—Validity of payment.]—(a) Each of the following employees, former employees, and estates of deceased employees of the Bureau of Reclamation who received the overpayment of compensation listed opposite his name for the period from March 30, 1952, through August 13, 1966, inclusive, or any portion or portions of such period, which overpayment resulted from administrative error, is hereby relieved of all liability to refund to the United States the amount of such overpayment:

Name	Overpayment
Adriance, Mary S	$40.00
Albee, Stanley	10.96
Anderson, E. L.	15.99
Chavez, Nicolas	15.08
Emmett, Wyllis L.	9.62
Fife, Rowland W.	1,324.62
Gallegos, Joseph M.	50.60
Gallman, W. Brooks	10.96
Guerra, Ciro	14.34
Gutierrez, Ely E.	19.65
Johnson, C. P.	401.60
Marmon, Walter	14.42
Moss, R. A.	12.80
Peavy, Patrick	1.44
Sanchez, Ernest G.	1,534.77
Torres, Sinesio	429.60

Each such employee or former employee who has at any time made any repayment to the United States on account of any such overpayments made to him (or, in the event of his death, the person who would be entitled thereto under the first section of the Act of August 3, 1950 (5 U.S.C. 5583)), shall be entitled to have an amount equal to all such repayments made by him refunded if application is made within two years after the date of enactment of this Act.

(b) For purposes of the Civil Service Retirement Act and the Federal Employees' Group Life Insurance Act of 1954, each overpayment for which liability is relieved by subsection (a) of this section shall be deemed to have been a valid payment. (83 Stat. 882)

Sec. 2. [Full credit to be given.]—In the audit and settlement of the accounts of any certifying or disbursing officer of the United States full credit shall be given for any amounts for which liability is relieved by the first section of this Act. (83 Stat. 883)

EXPLANATORY NOTE

Legislative History. S. 83, Private Law 91-45 in the 91st Congress. Reported in Senate from Judiciary May 29, 1969; S. Rept. No. 91-208. Passed Senate June 2, 1969. Reported in House from Judiciary August 5, 1969; H.R. Rept. No. 91-416. Passed House September 16, 1969.

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments (Act of October 8, 1969, Public Law 91-81, 83 Stat. 130)

[Sec. 1. Feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following proposals:

(1) Missouri River Basin project, Oregon Trail division, Corn Creek unit, in south-central Goshen County, in the vicinity of Hawk Springs, Wyoming;

(2) Missouri River Basin project, Longs Peak division, Front Range unit, in Cache la Poudre River and Saint Vrain Creek Basins and adjacent areas in the general vicinity of Boulder, Colorado;

(3) Missouri River Basin project, Upper Republican division, Armel unit, on the South Fork of the Republican River in the vicinity of Hale, Colorado;

(4) Shoshone project, Buffalo Bill Dam modifications, the Shoshone River, about five miles west of Cody, Wyoming;

(5) Missouri River Basin project, James Division, Sioux Falls unit, in the Big Sioux River Basin in the vicinity of Sioux Falls, South Dakota;

(6) Amargosa project, in the Amargosa River Basin in the vicinity of Beatty, Nevada, and Death Valley Junction, California;

(7) Willamette River project, Calapooia division, in the Calapooia River Basin in Linn County, Oregon; and

(8) Willamette River project, South Yamhill division, on the South Yamhill and Willamette Rivers in Yamhill and Polk Counties, Oregon. (83 Stat. 130)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Authorization of Studies Required. Section 8 of the Federal Water Project Recreation Act. (Act of July 9, 1965, 79 Stat. 213) requires specific authorization by law for the preparation of any feasibility report for a water resource project under Reclamation law. Section 8 of the 1965 Act appears in Volume III at page 1826.

Legislative History. S. 574, Public Law 91-81 in the 91st Congress. Reported in Senate from Interior and Insular Affairs May 22, 1969; S. Rept. No. 91-186. Passed Senate May 23, 1969. Reported in House from Interior and Insular Affairs July 9, 1969; H.R. Rept. No. 91-358. Passed House, amended, September 24, 1969. Senate agrees to House amendments September 25, 1969.

PUBLIC WORKS FOR WATER, POLLUTION CONTROL, AND POWER DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1970

[Extracts from] An act making appropriations for public works for water, pollution control, and power development, including the Corps of Engineers—Civil, the Panama Canal, the Federal Water Pollution Control Administration, the Bureau of Reclamation, power agencies of the Department of the Interior, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1970, and for other purposes. (Act of December 11, 1969, Public Law 91-144, 83 Stat. 323)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

* * * * *

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Advancement of funds by Westlands Water District.]—*Provided further,* That the contract between the Westlands Water District and the United States dated June 5, 1963, may be amended to provide for the advancement of funds by the District pursuant to the Act of March 4, 1921 (41 Stat. 1404), to aid in the construction of the distribution and drainage system for the District, and the repayment of reimbursable costs of the Central Valley Project shall be credited annually in an amount equal to any reduction of water charges as provided by the amended contract: (83 Stat. 330)

EXPLANATORY NOTE

Reference in the Text. The reference to the Act of March 4, 1921, is to a paragraph in that Act which is popularly referred to as the Contributed Funds Act. The paragraph appears in Volume I at page 291.

* * * * *

[Shasta View Irrigation District rehabilitation program.]—*Provided further,* That of the amount herein appropriated not to exceed $10,000 shall be available to initiate a rehabilitation and betterment program in the Shasta

View Irrigation District, Klamath Project, Oregon, under the Act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior. (83 Stat. 330)

EXPLANATORY NOTE

Reference in the Text. The Act of October 7, 1949, referred to in the text, is the Rehabilitation and Betterment Act. It appears in Volume II at page 969.

* * * * *

ADMINISTRATIVE PROVISIONS

* * * * *

[Tule Lake and Lower Klamath Lake Divisions—Application of net revenues.]—*Provided*, That net revenues of not to exceed $50,000 arising from the lease of grazing and agricultural lands within the Tule Lake and Lower Klamath Lake Divisions, as determined by the Secretary, may be credited to the cost heretofore and hereafter incurred for the Klamath project water rights program, notwithstanding the provisions of section 2(c) of the Act of June 17, 1944, and sections 2(a), 2(b), and 2(c) of the Act of August 1, 1956. (83 Stat. 332)

EXPLANATORY NOTES

Provision Repeated. A similar provision is contained in the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Act of October 7, 1970, 84 Stat. 898) except that the words "heretofore and hereafter incurred for the Klamath Project water rights program" are replaced by "incurred in the negotiation of contracts for the purpose of transferring responsibility of operation and maintenance of project facilities to the project water users associations."

References in the Text. The Acts of June 17, 1944 (58 Stat. 279) and August 1, 1956 (70 Stat. 799) referred to in the text, make provisions for the application of revenues from lands of the Klamath Project. The Acts appear in Volume II at pages 788 and 1322, respectively.

* * * * *

BONNEVILLE POWER ADMINISTRATION

CONSTRUCTION

* * * * *

[Hydrothermal power program.]—*Provided*, That not more than $100,000 of the funds appropriated herein shall be available for preliminary engineering required by the Bonneville Power Administration in connection with the proposed agreements with the Portland General Electric Company and the Eugene Water and Electric Board to acquire from preference customers and pay by net billing for generating capability from non-federally

financed thermal generating plants in the manner described in the committee report. (83 Stat. 333)

EXPLANATORY NOTES

Committee Report. The report of the Senate Committee on Appropriations provides in relevant part: "The committee is aware of the regional joint program for meeting future power requirements of the Pacific Northwest described by Bonneville Power Administration during this and previous hearings. The program does not contemplate federally financed and owned thermal facilities. The committee approved implementation of this program by the use of net billing as the means of effecting payment by the Bonneville Power Administration for part of the generating capacity of nonfederally financed thermal plants, under suitable agreements between the Bonneville Power Administration and preference customers to accomplish this purpose. Such agreements would provide that the Bonneville Power Administration will acquire from a date certain, on a cost basis, the preference customers' rights to the generating capability of nonfederally financed plants, whether or not they are operable. Any costs or losses to the Bonneville Power Administration under these agreements will be borne by Bonneville Power Administration ratepayers through rate adjustments if necessary. The committee requests that the proposed agreements be submitted to the House and Senate Appropriations Committees at least 30 days prior to their execution by the Administrator." S. Rept. No. 91-528, 91st Cong., 1st Sess. 49-50 (1969).

Conference Committee Report. The report of the committee of conference limited the approval to the proposed agreements with the Portland General Electric Company and the Eugene Water and Power Board regarding the Trojan Plant. H.R. Rept. No. 91-697, 91st Cong., 1st Sess. 17 (1969).

NOTE OF OPINION

1. Net billing agreements.

The Bonneville Power Administrator has authority to enter into firm, long-term agreements with preference customer participants in the Trojan project and in other projects in the hydrothermal power program under which BPA takes the participants' share of project output and agrees to pay the participants under net billing arrangements for their share of project costs from a date certain whether or not the project is operable. The contracts are supported by the Administrator's authority to operate federal hydroelectric projects for the "benefit of the general public," to "encourage the widest possible diversified use of electric energy," and to "encourage the most widespread use" of federal power "at the lowest possible rates" to consumers. The 10-year hydrothermal power program which the contracts implement was specifically approved by Congress in the Public Works Appropriation Act for fiscal year 1970. Solicitor Melich Opinion, M-36812, 77 I.D. 141 (1970).

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1970". (83 Stat. 338)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 14159, Public Law 91-144 in the 91st Congress. H.R. Rept. No. 91-548. S. Rept. No. 91-528. H.R. Rept. No. 91-697 (conference report).

TAHOE REGIONAL PLANNING COMPACT

An act to grant the consent of the Congress to the Tahoe regional planning compact, to authorize the Secretary of the Interior and others to cooperate with the planning agency thereby created, and for other purposes. (Act of December 18, 1969, Public Law 91-148, 83 Stat. 360)

[Sec.1. Consent of Congress.]—In order to encourage the wise use and conservation of the waters of Lake Tahoe and of the resources of the area around said lake, the consent of the Congress is hereby given to the Tahoe regional planning compact heretofore adopted by the States of California and Nevada, which compact reads as follows:

"TAHOE REGIONAL PLANNING COMPACT

"Article I. Findings and Declarations of Policy

"(a) It is found and declared that the waters of Lake Tahoe and other resources of the Lake Tahoe region are threatened with deterioration or degeneration, which may endanger the natural beauty and economic productivity of the region.

"(b) It is further declared that by virtue of the special conditions and circumstances of the natural ecology, developmental pattern, population distribution, and human needs in the Lake Tahoe region, the region is experiencing problems of resource use and deficiencies of environmental control.

"(c) It is further found and declared that there is a need to maintain an equilibrium between the region's natural endowment and its manmade environment, to preserve the scenic beauty and recreational opportunities of the region, and it is recognized that for the purpose of enhancing the efficiency and governmental effectiveness of the region, it is imperative that there be established an areawide planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and to perform other essential functions, as enumerated in this title.

"ARTICLE II. DEFINITIONS

"As used in this compact:

"(a) 'Region,' includes Lake Tahoe, the adjacent parts of the Counties of Douglas, Ormsby, and Washoe lying within the Tahoe Basin in the State of Nevada, and the adjacent parts of the Counties of Placer and El Dorado lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the

intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15 North, Range 16 East, M.D.B.&M. The region defined and described herein shall be as precisely delineated on official maps of the agency.

"(b) 'Agency' means the Tahoe Regional Planning Agency.

"(c) 'Governing body' means the governing board of the Tahoe Regional Planning Agency.

"(d) 'Regional plan' shall mean the long-term general plan for the development of the region.

"(e) 'Interim plan' shall mean the interim regional plan adopted pending the adoption of the regional plan.

"(f) 'Planning commission' means the advisory planning commission appointed pursuant to paragraph (h) of Article III.

"ARTICLE III. ORGANIZATION

"(a) There is created the Tahoe Regional Planning Agency as a separate legal entity.

"The governing body of the agency shall be constituted as follows:

"One member appointed by each of the County Boards of Supervisors of the Counties of El Dorado and Placer and one member appointed by the City Council of the City of South Lake Tahoe. Each member shall be a member of the city council or county board of supervisors which he represents and, in the case of a supervisor, shall be a resident of a county supervisorial district lying wholly or partly within the region.

"One member appointed by each of the boards of county commissioners of Douglas, Ormsby and Washoe counties. Any member so appointed shall be a resident of the county from which he is appointed and may be, but is not required to be:

"(1) A member of the board which appoints him; and

"(2) a resident of or the owner of real property in the region, as each board of county commissioners may in its own discretion determine. The manner of selecting the person so to be appointed may be further prescribed by county ordinance. A person so appointed shall before taking his seat on the governing body disclose all his economic interests in the region, and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. If any board of county commissioners fails to make an appointment required by this paragraph within 30 days after the effective date of this act or the occurrence of a vacancy on the governing body, the governor shall make such appointment. The position of a member appointed by a board of county commissioners shall be deemed vacant if such member is absent from three consecutive meetings of the governing body in any calendar year.

"One member appointed by the Governor of California and one member appointed by the Governor of Nevada. The appointment of the California member is subject to Senate confirmation; he shall not be a resident of the region and shall represent the public at large. The member appointed by

the Governor of Nevada shall not be a resident of the region and shall represent the public at large.

"The Administrator of the California Resources Agency or his designee and the Director of the Nevada Department of Conservation and Natural Resources or his designee.

"(b) The members of the agency shall serve without compensation, but the expenses of each member shall be met by the body which he represents in accordance with the law of that body. All other expenses incurred by the governing body in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided, shall be paid by the agency out of its own funds.

"(c) The term of office of the members of the governing body shall be at the pleasure of the appointing authority in each case, but each appointments shall be reviewed no less often than every 4 years.

"(d) The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held. The governing body shall fix a date for its regular monthly meeting in such terms as 'the first Monday of each month,' and shall not change such date oftener than once in any calendar year. Notice of the date so fixed shall be given by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region. Notice of any special meeting, except an emergency meeting, shall be given by so publishing the date, place and agenda at least 5 days prior to the meeting.

"(e) The position of a member of the governing body shall be considered vacated upon his loss of any of the qualifications required for his appointment and in such event the appointing authority shall appoint a successor.

"(f) The governing body shall elect from its own members a chairman and vice chairman, whose terms of office shall be two years, and who may be reelected. If a vacancy occurs in either office, the governing body may fill such vacancy for the unexpired term.

"(g) A majority of the members of the governing body from each state shall constitute a quorum for the transaction of the business of the agency. A majority vote of the members present representing each state shall be required to take action with respect to any matter. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

"(h) An advisory planning commission shall be appointed by the agency, which shall consist of an equal number of members from each state. The commission shall include but shall not be limited to: the chief planning officers of Placer County, El Dorado County, and the City of South Lake Tahoe in California and the Counties of Douglas, Ormsby, and Washoe in Nevada, the Placer County Director of Sanitation, the El Dorado County Director of Sanitation, the county health officer of Douglas County or his designee, the county health officer of Washoe County or his designee, the

Chief of the Bureau of Environment Health of the Health Division of Department of Health, Welfare and Rehabilitation of the State of Nevada or his designee, the executive officer of the Lahontan Regional Water Quality Control Board or his designee, the executive officer of the Tahoe Regional Planning Agency who shall act as chairman and at least four lay members each of whom shall be a resident of the region.

"(i) The agency shall establish and maintain an office within the region. The agency may rent or own property and equipment. Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

"(j) Each authority charged under this compact or by the law of either state with the duty of appointing a member of the governing body of the agency shall by certified copy of its resolution or other action notify the Secretary of State of its own state of the action taken. Upon receipt of certified copies of the resolutions or notifications appointing the members of the governing body, the Secretary of State of each respective state shall notify the Governor of the state who shall, after consultation with the Governor of the other state, issue a concurrent call for the organization meeting of the governing body at a location determined jointly by the two governors.

"(k) Each state may provide by law for the disclosure or elimination of conflicts of interest on the part of members of the governing body appointed from the state.

"ARTICLE IV. PERSONNEL

"(a) The governing body shall determine the qualification of, and it shall appoint and fix the salary of, the executive officer of the agency, and shall employ such other staff and legal counsel as may be necessary to execute the powers and functions provided for under this act or in accordance with any intergovernmental contracts or agreements the agency may be responsible for administering.

"(b) Agency personnel standards and regulations shall conform insofar as possible to the regulations and procedures of the civil service of the State of California or the State of Nevada, as may be determined by the governing body of the agency, and shall be regional and bistate in application and effect; provided that the governing body may, for administrative convenience and at its discretion, assign the administration of designated personnel arrangements to an agency of either state, and provided that administratively convenient adjustments be made in the standards and regulations governing personnel assigned under intergovernmental agreements.

"(c) The agency may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the agency terms and conditions of employment similar to those enjoyed by employees of California and Nevada generally.

"ARTICLE V. PLANNING

"(a) In preparing each of the plans required by this article and each

amendment thereto, if any, subsequent to its adoption, the planning commission after due notice shall hold at least one public hearing which may be continued from time to time, and shall review the testimony and any written recommendations presented at such hearing before recommending the plan or amendment. The notice required by this paragraph shall be given at least 20 days prior to the public hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region.

"The planning commission shall then recommend such plan or amendment to the governing body for adoption by ordinance. The governing body may adopt, modify or reject the proposed plan or amendment, or may initiate and adopt a plan or amendment without referring it to the planning commission. If the governing body initiates or substantially modifies a plan or amendment, it shall hold at least one public hearing thereon after due notice as required in this paragraph.

"If a request is made for the amendment of the regional plan by:

"(1) a political subdivision a part of whose territory would be affected by such amendment; or

"(2) the owner or lessee of real property which would be affected by such amendment.

the governing body shall complete its action on such amendment within 60 days after such request is delivered to the agency.

"TAHOE REGIONAL PLAN

"(b) Within 15 months after the formation of the agency, the planning commission shall recommend a regional plan. Within 18 months after the formation of the agency, the governing body shall adopt a regional plan. After adoption, the planning commission and governing body shall continuously review and maintain the regional plan. The regional plan shall consist of a diagram, or diagrams, and text, or texts setting forth the projects and proposals for implementation of the regional plan, a description of the needs and goals of the region and a statement of the policies, standards, and elements of the regional plan.

"The regional plan shall include the following correlated elements:

"(1) A land-use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the region, including but not limited to, an indication or allocation of maximum population densities.

"(2) A transportation plan for the integrated development of a regional system of transportation, including but not limited to, freeways, parkways, highways, transportation facilities, transit routes, waterways, navigation and aviation aids and facilities, and appurtenant terminals and facilities for the movement of people and goods within the region.

"(3) A conservation plan for the preservation, development, utilization, and management of the scenic and other natural resources within the basin, including but not limited to, soils, shoreline and submerged lands, scenic

corridors along transportation routes, open spaces, recreational and historical facilities.

"(4) A recreation plan for the development, utilization, and management of the recreational resources of the region, including but not limited to, wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, marinas and other recreational facilities.

"(5) A public services and facilities plan for the general location, scale and provision of public services and facilities, which, by the nature of their function, size, extent and other characteristics are necessary or appropriate for inclusion in the regional plan.

"In formulating and maintaining the regional plan, the planning commission and governing body shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the counties and cities within the region, the plans and planning activities of the state, federal and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region. Where necessary for the realization of the regional plan, the agency may engage in collaborative planning with local governmental jurisdictions located outside the region, but contiguous to its boundaries. In formulating and implementing the regional plan, the agency shall seek the cooperation and consider the recommendations of counties and cities and other agencies of local government, of state and federal agencies, of educational institutions and research organizations, whether public or private, and of civic groups and private individuals.

"(c) All provisions of the Tahoe regional general plan shall be enforced by the agency and by the states, counties and cities in the region.

"TAHOE REGIONAL INTERIM PLAN

"(d) Within 60 days after the formation of the agency, the planning commission shall recommend a regional interim plan. Within 90 days after the formation of the agency, the governing body shall adopt a regional interim plan. The interim plan shall consist of statements of development policies, criteria and standards for planning and development, of plans or portions of plans, and projects and planning decisions, which the agency finds it necessary to adopt and administer on an interim basis in accordance with the substantive powers granted to it in this agreement.

"(e) The agency shall maintain the data, maps and other information developed in the course of formulating and administering the regional plan and interim plan, in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other agencies of government and by private organizations and individuals concerned.

"(f) All provisions of the interim plan shall be enforced by the agency and by the states, the counties, and cities.

"ARTICLE VI. AGENCY'S POWERS

"(a) The governing body shall adopt all necessary ordinances, rules, regulations and policies to effectuate the adopted regional and interim plans.

Every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the basin, and any political subdivision may adopt and enforce an equal or higher standard applicable to the same subject of regulation in its territory. The regulations shall contain general, regional standards including but not limited to the following: water purity and clarity; subdivision; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavations, cuts and grading; piers; harbors, breakwaters; or channels and other shoreline developments; waste disposal in shoreline areas; waste disposal from boats; mobile-home parks; house relocation; outdoor advertising; flood plain protection; soil and sedimentation control; air pollution; and watershed protection. Whenever possible without diminishing the effectiveness of the interim plan or the general plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective states, counties and cities the enactment of specific and local ordinances, rules, regulations and policies which conform to the interim or general plan.

"Every ordinance adopted by the agency shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region. Except an ordinance adopting or amending the interim plan or the regional plan, no ordinance shall become effective until 60 days after its adoption. Immediately after its adoption, a copy of each ordinance shall be transmitted to the governing body of each political subdivision having territory within the region.

"Interim regulations shall be adopted within 90 days from the formation of the agency and final regulations within 18 months after the formation of the agency.

"Every plan, ordinance, rule, regulation or policy adopted by the agency shall recognize as a permitted and conforming use any business or recreational establishment which is required by law of the state in which it is located to be individually licensed by the state, if such business or establishment:

"(1) Was so licensed on February 5, 1968, or was licensed for a limited season during any part of the calendar year immediately preceding February 5, 1968.

"(2) Is to be constructed on land which was so zoned or designated in a finally adopted master plan on February 5, 1968, as to permit the construction of such a business or establishment.

"(b) All ordinances, rules, regulations and policies adopted by the agency shall be enforced by the agency and by the respective states, counties, and cities. The appropriate courts of the respective states, each within its limits of territory and subject matter provided by state law, are vested with jurisdiction over civil actions to which the agency is a party and criminal actions for violations of its ordinances. Each such action shall be brought in a court of the state where the violation is committed or where the property affected by a civil action is situated, unless the action is brought in a

federal court. For this purpose, the agency shall be deemed a political subdivision of both the State of California and the State of Nevada.

"(c) Except as otherwise provided in paragraph (d), all public works projects shall be reviewed prior to construction and approved by the agency as to the project's compliance with the adopted regional general plan.

"(d) All plans, programs and proposals of the State of California or Nevada, or of its executive or administrative agencies, which may substantially affect, or may specifically apply, to the uses of land, water, air, space and other natural resources in the region, including but not limited to public works plans, programs and proposals concerning highway routing, design and construction, shall be referred to the agency for its review, as to conformity with the regional plan or interim plan, and for report and recommendations by the agency to the executive head of the state agency concerned and to the Governor. A public works project which is initiated and is to be constructed by a department of either state shall be submitted to the agency for review and recommendation, but may be constructed as proposed.

"(e) The agency shall police the region to ensure compliance with the general plan and adopted ordinances, rules, regulations and policies. If it is found that the general plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in a court of competent jurisdiction to ensure compliance.

"(f) Violation of any ordinance of the agency is a misdemeanor.

"(g) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by state or federal law.

"(h) Each intergovernmental contract or agreement shall provide for its own funding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.

"(i) Whenever a new city is formed within the region, the membership of the governing body shall be increased by two additional members, one appointed by, and who shall be a member of, the legislative body of the new city, and one appointed by the Governor of the state in which the city is not located. A member appointed by the Governor of California is subject to Senate confirmation.

"(j) Every record of the agency, whether public or not, shall be open for examination to the Legislative Analyst of the State of California and the Fiscal Analyst of the State of Nevada.

"(k) Whenever under the provisions of this article or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any proposal, public or private, the agency shall take final action, whether to approve, to require modification or to reject such proposal, within 60 days after such proposal is delivered to the agency. If the agency does not take final action within 60 days, the proposal shall be deemed approved.

"ARTICLE VII. FINANCES

"(a) Except as provided in paragraph (e), on or before December 30 of each calendar year the agency shall establish the amount of money necessary to support its activities for the next succeeding fiscal year commencing July 1 of the following year. The agency shall apportion not more than $150,000 of this amount among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region in each county bears to the total full cash valuation of taxable property within the region. Each county in California shall pay the sum allotted to it by the agency from any funds available therefor and may levy a tax on any taxable property within its boundaries sufficient to pay the amount so allocated to it. Each county in Nevada shall pay such sums from its general fund or from any other moneys available therefor.

"(b) The agency may fix and collect reasonable fees for any services rendered by it.

"(c) The agency shall be strictly accountable to any county in the region for all funds paid by it to the agency and shall be strictly accountable to all participating bodies for all receipts and disbursements.

"(d) The agency is authorized to receive gifts, donations, subventions, grants, and other financial aids and funds.

"(e) As soon as possible after the ratification of this compact, the agency shall estimate the amount of money necessary to support its activities:

"(1) For the remainder of the then-current fiscal year; and

"(2) If the first estimate is made between January 1 and June 30, for the fiscal year beginning on July 1 of that calendar year.

The agency shall then allot such amount among the several counties, subject to the restriction and in the manner provided in paragraph (a), and each county shall pay such amount.

"(f) The agency shall not obligate itself beyond the moneys due under this article for its support from the several counties for the current fiscal year, plus any moneys on hand or irrevocably pledged to its support from other sources. No obligation contracted by the agency shall bind either of the party states or any political subdivision thereof.

"ARTICLE VIII. MISCELLANEOUS

"(a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. Except as provided in paragraph (c), the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining state and in full force and effect as to the state affected as to all severable matters.

"(b) The agency shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the Legislature of either state concurred in by Legislature of the other.

"(c) A state party to this compact may withdraw therefrom by enacting a statute repealing the compact. Notice of withdrawal shall be communicated officially and in writing to the Governor of the other state and to the agency administrators. This provision is not severable, and if it is held to be unconstitutional or invalid, no other provision of this compact shall be binding upon the State of Nevada or the State of California.

"(d) No provision of this compact shall have any effect upon the allocation or distribution of interstate waters or upon any appropriative water right." (83 Stat. 360)

Sec. 2. [Federal cooperation.]—The Secretary of the Interior and the Secretary of Agriculture are authorized, upon request of the Tahoe Regional Planning Agency, to cooperate with said agency in all respects compatible with carrying out the normal duties of their Departments. (83 Stat. 369)

Sec. 3. [Conditional consent of United States.]—The consent to the compact by the United States is subject to the condition that the President may appoint a nonvoting representative of the United States to the Tahoe regional planning governing board. (83 Stat. 369)

Sec. 4. [Additional powers—Consent of Congress required.]—Any additional powers conferred on the agency pursuant to article VIII(b) of the compact shall not be exercised unless consented to by the Congress. (83 Stat. 369)

Sec. 5. [Rights, etc., of United States unaffected.]—Nothing contained in this Act or in the compact consented to shall in any way affect the powers, rights, or obligations of the United States, or the applicability of any law or regulation of the United States in, over, or to the region or waters which are the subject of the compact, or in any way affect rights owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States. (83. Stat. 369)

Sec. 6. [Disclosure of information to Congress]—The right is hereby reserved by the Congress or any of its standing committees to require the disclosure and furnishing of such information and data by or concerning the Tahoe Regional Planning Agency as is deemed appropriate by the Congress or such committee. (83 Stat. 369)

Sec. 7. [Reservation clause.]—The right to alter, amend or repeal this Act is expressly reserved. (83 Stat. 369)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 118, Public Law 91-148 in the 91st Congress. Reported in Senate from Judiciary November 4, 1969; S. Rept. No. 91-510. Passed Senate November 5, 1969. Reported in House from Judiciary November 18, 1969; H.R. Rept. No. 91-650. Passed House, amended, December 1, 1969. Senate agrees to House amendment December 3, 1969.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

An act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes (Act of January 1, 1970, Public Law 91-190, 83 Stat. 852)

[Sec. 1. Short title.]—This Act may be cited as the "National Environmental Policy Act of 1969". (83 Stat. 852; 42 U.S.C. § 4321 note)

PURPOSE

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. (83 Stat. 852; 42 U.S.C. § 4321)

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment with-

out degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (83 Stat. 452; 42 U.S.C. § 4331)

NOTES OF OPINIONS

1. Discretion to defer project construction
2. Substantive compliance

1. Discretion to defer project construction

The Act of August 5, 1965 authorizing the Garrison Diversion Unit permitted the Secretary to exercise limited discretion over the timing of construction of the project to the extent authorized by the National Environmental Policy Act. The Secretary had authority to defer construction until additional environmental impact statements were prepared and perhaps also until Congress had a reasonable opportunity to reconsider the project authorization in light of newly available environmental information, but he was not authorized to promise unconditionally to defer construction until 60 days after Congress took action on the project authorization, regardless of how long Congressional action may be deferred. Thus, where the Secretary agreed in a court stipulation to halt project construction until additional environmental and other studies were prepared, legislation was submitted to Congress regarding reauthorization or modification of the project, and 60 days had elapsed after Congress acted on such legislation, the agreement was read to include the implied condition that if Congress failed to act after having had a reasonable opportunity to reconsider the 1965 authorization, the parties shall no longer be bound by the stipulation. Since the Secretary had prepared the additional studies and submitted them to Congress, the record showed clearly that the controversy over the project was brought to the attention of Congress, and Congress did not act after a reasonable opportunity to do so, the condition was met and the Secretary's obligations under the stipulation were discharged. *National Audubon Society, Inc. v. Watt*, 678 F.2d 299 (D.C. Cir. 1982).

2. Substantive compliance

Considering the low level of adverse impacts on South Dakota due to the Garrison Diversion Unit, which impacts were clearly considered in good faith in the formulation of the decision, the decades of Congressional support for the project, and the very obvious benefits that will be the result of the project in North Dakota, the decision to proceed with the 250,000-acre plan for development of the project described in a 1979 environmental impact statement was not arbitrary and capricious and did not give insufficient weight to environmental values. *James River Flood Control Association v. Watt*, 553 F. Supp. 1284 (D. S. Dak. 1982).

Sec. 102. [Policies, regulations, laws to be interpreted in accordance with this Act—Agency duties—Systematic, interdisciplinary approach—Presently unquantified amenities and values—Environmental impact statement—Impact statement prepared by State agency—Unresolved conflicts concerning alternative uses of available resources—International cooperation—Availability of advice and information—Use of ecological information—Assist Council on Environmental Quality.]—The

Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides

early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act. (83 Stat. 853; Act of August 9, 1975, 89 Stat. 424; 42 U.S.C. § 4332)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions are included only for cases applying the National Environmental Policy Act to activities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern and Western Area Power Administrations. No comprehensive analysis of the Act is intended.

1975 Amendment. The Act of August 9, 1975 (Public Law 94-83, 89 Stat. 424) amended section 102(2) by adding a new subparagraph (D) and redesignating former subparagraphs (D) through (H) as (E) through (I), respectively. The 1975 Act does not appear herein.

Reference in the Text. Section 552 of title 5, United States Code, referred to in subsection (c) of the text, is the Public Information Section of the Administrative Procedure Act. The Section appears in Volume III, Appendix, at page 1930.

Economic Impacts. The report of the conferees on the Agricultural-Environmental and Consumer Protection Programs Appropriations Act, Fiscal Year 1972 (H.R. 9270), stated in part:

"The conferees believe it most important that the various agencies of Government and the Congress, in the review and appraisal of Federal Government programs, projects, and activities, have full information available not only as to the impact upon the environment but also the significant economic impact on the public and the affected areas and industries.

"The conferees, therefore, direct that, in addition to the environmental effects of an action, all required reports from departments, agencies, or persons shall also include information, as prepared by the agency having responsibility for administration of the program, project, or activity

involved, on the effect on the economy, including employment, unemployment, and, other economic impacts.

"The conferees expect the agencies involved to spend such additional sums as may be necessary, out of general funds available, to cover any additional costs of preparing such statements.

"This requirement will apply primarily to the environmental impact statements required under section 102 of the Environmental Quality Act, and the reports required under the permit dumping programs based on the Refuse Act of 1899." H.R. Rept. No. 92-376, 95th Cong., 1st Sess. 7-8 (1971).

NOTES OF OPINIONS

Environmental impact statements (EISs) 1-60
- **Adequacy 1-25**
  - **Alternatives 1**
  - **Cost/benefit analyses 2**
  - **Differences of scientific opinion 3**
  - **Discount rate 4**
  - **Draft EIS 5**
  - **Economic effects 6**
  - **Generally 7**
  - **Incorporation by reference 8**
  - **Injunctive relief 9**
  - **Level of detail 10**
  - **Water use priorities 11**
- **Continuing appropriations 26**
- **Construction during preparation 27**
- **Exemptions from filing 28**
- **"Local agency" 29**
- **Purposes 30**
- **Relationship with other laws 31**
- **Scope 32**
- **Standing to sue 33**
- **When required 34-50**
  - **Case or controversy 34**
  - **Federal responsibility 35**
  - **Generally 36**
  - **Legislative proposals 37**
  - **Ongoing programs and activities 38**
  - **Supplemental EIS 39**
- **Procedural compliance 51-60**
  - **Alternative studies 51**
  - **Judicial review 52**

1. Adequacy—Alternatives

Where the court concludes that the preparers of the environmental impact statement on the Miles City/New Underwood transmission line took a "hard look" at the environmental consequences of their action, the court will accept the EIS as sufficient even though it does not discuss the main alternative route proposed by the plaintiffs. *Citizens and Landowners Against the Miles City/New Underwood Powerline v. Secretary*, 513 F. Supp. 257 (D. S. Dak. 1981), affirmed on the ground of laches, 683 F. 2d 1171 (8th Cir. 1982).

The consideration of possible alternatives is the linchpin of the entire environmental impact statement and should involve a "rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might . . . avoid some or all of the adverse environmental effects." The Bureau failed to comply with this criterion in preparing an environmental impact statement for the installation of a 23-megawatt powerplant at the Navajo Dam facility of the Colorado River Storage Project to power the sprinkler irrigation system of the Navajo Indian Irrigation Project. The EIS discussed only briefly the options of obtaining power from existing power sources or using gas-powered engines and entirely neglected to even mention other reasonable alternatives such as 1) building a smaller powerplant, 2) obtaining power from the uncommitted reserves stored in the Colorado River Storage Project system, and 3) delaying construction pending completion of enviromental studies. *National Wildlife Federation v. Andrus*, 440 F. Supp. 1245 (D.D.C. 1977).

The environmental impact statement for the Strawberry Aqueduct and Collection System, Bonneville Unit, Central Utah Project, which devoted over 100 pages to alternatives to the entire Bonneville Unit plan, including possible alternatives to the Currant Creek Dam (the particular system feature whose construction had been challenged), provided a good faith, objective and reasonable discussion of alternatives. The environmental impact statement is not required to consider alternatives whose effects cannot reasonably be ascertained and whose implementation is deemed remote and speculative. Rather the statement need set forth only those alternatives "sufficient to permit a reasoned choice." *Sierra Club v. Stamm*, 507 F.2d 788 (10th Cir. 1974).

Sections 102(2)(C) and 102(2)(D) of the National Environmental Policy Act, which require that an environmental impact statement

present alternative courses of action, were designed to assume that such alternatives are explored in the initial decisionmaking process and to provide an opportunity to those removed from that process also to evaluate those alternatives. But the range of alternatives considered need not extend beyond those reasonably related to the purposes of the project. Consequently, where it has been established that the primary purposes of the first phase of the Teton Dam Project were to prevent flooding and provide irrigation water and the secondary purposes were to provide hydroelectric power and recreational benefits, the environmental impact statement satisfied the requirements of the Act by considering the alternatives of (1) no development whatever, (2) ground water pumping to obtain irrigation water, and (3) levees to control flooding in the Lower Teton Valley, as well as other less reasonably related alternatives, all of which were rejected. *Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir. 1974).

The environmental impact statement filed for the New Melones Dam satisfied the requirement of section 102(2)(C)(iii) of the National Environmental Policy Act that it contain a detailed statement of all reasonable structural and nonstructural alternatives to the proposed dam by considering such alternatives as: possible alternative reservoir sizes, including increasing the size of the downstream Tulloch Dam; alternative reservoir sizes at the New Melones site; alternatives to the planned operation such as releases downstream to enhance fisheries and water quality and to meet the demands of other nearby service areas; and alternatives to constructing the reservoir itself, such as channel and levee improvements, floodplain management and abandonment of the project. The Act requires only that all reasonable alternatives to the project be considered, even if some were only briefly alluded to or mentioned. *Environmental Defense Fund, Inc. v. Armstrong*, 352 F. Supp. 50 (N.D. Cal. 1972) and 356 F. Supp. 131 (N.D. Cal. 1973), aff'd, 487 F.2d 814 (9th Cir. 1973), cert. denied, 416 U.S. 974 (1974).

2.—Cost/benefit analyses

The National Environmental Policy Act does not demand that every Federal decision be verified by reduction to mathematical absolutes for insertion into a precise formula. Rather, by giving the decisionmaker and other readers enough detail concerning all of the costs and benefits to permit a reasoned evaluation and decision, the statement satisfies the Act's requirement that long-term environmental costs be weighed against immediate benefits. Thus, where the environmental impact statement for the first stage of the Palmetto Bend Project was found, in all other respects, sufficiently clear and comprehensive, there was no real reason for a mathematical decision as to a cost-benefit ratio. Moreover, a cost-benefit ratio was considered in the project's development in reports filed in 1962 and 1963 and in the feasibility report filed with Congress in February 1965. Finally, the responsibility for determining whether the United States can afford this project lies in the Congress which, based on the project's history, has already decided it is worth the money. *Sierra Club v. Morton*, 431 F. Supp. 11 (S.D. Tex. 1975).

The environmental impact statement for the Strawberry Aqueduct and Collection System, Bonneville Unit, Central Utah Project, was not required to contain a cost-benefit ratio. The National Environmental Policy Act requires only that "presently unquantified environmental amenities and values . . . be given appropriate consideration in decisionmaking along with economic and technical considerations." This does not require the fixing of a dollar figure for either environmental losses or benefits. *Sierra Club v. Stamm*, 507 F.2d 788 (10th Cir. 1974).

The environmental impact statement for the first phase of the Teton Dam Project adequately evaluated the full range of alternatives reasonably related to project purposes without conducting a formal and mathematically expressed cost-benefit analysis. Because there is sufficient disagreement about how environmental amenities should be valued to permit any value so assigned to be challenged on the grounds of its subjectivity in most, if not all, projects, the ultimate decision to proceed with the project is not strictly a mathematical determination. Moreover, the first phase of the Teton Dam Project has already, independently, undergone a cost-benefit analysis because of its status as a reclamation project. *Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir. 1974).

3.—Differences of scientific opinion

The fact that there is a difference of scientific opinion among experts regarding the environmental impact of the first stage of the Palmetto Bend Project does not mean that the

impact has been inadequately discussed in the Project's final environmental impact statement, nor does such difference mean the statement's explanations must be disregarded. *Sierra Club v. Morton*, 431 F. Supp. 11 (S.D. Tex. 1975).

4.—Discount rate

It is not inappropriate for the Government to employ a 3½% discount rate in the environmental impact statement for the New Melones Dam even though such rate was, arguably, economically unrealistic at the time the statement was filed, as this is the rate Congress has expressly authorized to be used in evaluating Government projects. *Environmental Defense Fund, Inc. v. Armstrong*, 352 F. Supp. 50 (N.D. Cal. 1972), aff'd, 487 F.2d 814 (9th Cir. 1973), cert. denied, 416 U.S. 974 (1974).

5.—Draft EIS

In determining whether the requirements of the National Environmental Policy Act were met with regard to the Garrison Diversion Unit, a draft environmental impact statement prepared in 1976 could be considered in addition to final environmental impact statements prepared in 1974 and 1979, particularly since the 1979 statement makes it clear that it was intended to act as a "supplement" to the 1976 draft statement and, presumably, anyone who so desired could have commented on any inadequacy in the 1976 statement while the 1979 statement was being processed. *James River Flood Control Association v. Watt*, 553 F. Supp. 1284 (D. S. Dak. 1982).

6.—Economic effects

In preparing the "Final Environmental Statement" for the O'Neill Unit, Lower Niobrara Division of the Pick-Sloan Missouri Basin Project, the Bureau of Reclamation was not obligated to provide information regarding the economic benefits and costs of the proposed project. Neither the National Environmental Policy Act nor decisional law require this information unless, of course, it has environmental implications. If, however, the environmental impact statement does delineate economic issues they should be fully and objectively described. *Save the Niobrara River Association v. Andrus*, 483 F. Supp. 844 (D. Neb. 1979).

7.—Generally

The environmental impact statement on the Lower Monumental-Ashe transmission line is not insufficient because it did not include an intricate, computerized system of analysis or all of the working papers that form the basis of the information presented. *Columbia Basin Land Protection Association v. Schlesinger*, 643 F. 2d 585, 592-95 (9th Cir. 1981), affirming *Columbia Basin Land Protection Association v. Kleppe*, 417 F. Supp. 46 (E.D. Wash. 1976).

In preparing an environmental impact statement as required by section 102 of the National Environmental Policy Act the discussion of environmental effects need not be exhaustive, but need only provide sufficient information for a reasoned choice of alternatives. The Act does not require that "each problem be documented from every angle to explore its every potential for good or ill." Rather, in determining whether an agency has complied with section 102 the rule of reason should govern. Nevertheless, both the "Final Environmental Statement" and the subsequent Final Environmental Statement Supplement for the O'Neill Unit, Lower Niobrara Division of the Pick-Sloan Missouri Basin Project were held to inadequately comply with the requirements of the Act with regard to several aspects of the Unit's effect on the environment. *Save the Niobrara River Association v. Andrus*, 483 F. Supp. 844 (D. Neb. 1979).

The final environmental impact statement (FES) for the Initial Stage of the Oahe Unit is not inadequate because it does not discuss the complete project or because studies are continuing on problems which the FES identifies. *United Family Farmers, Inc., v. Kleppe*, 418 F. Supp. 591 (D. S.D. 1976), affirmed on other grounds, 552 F.2d 823 (8th Cir. 1977).

The "Final Environmental Impact Statement" for the San Felipe Division of the Central Valley Project, which consisted of 475 pages and had been preceded by a "Draft Environmental Impact Statement" of 175 pages, satisfied the requirements of section 102 of the National Environmental Policy Act in that it adequately enabled decisionmakers to consider the project with full awareness of the environmental consequences and provided the public with information and encouraged public participation in developing that information. *Environmental Defense Fund, Inc. v. Stamm*, 430 F. Supp. 664 (N.D. Cal. 1977).

The environmental impact statement required for the first stage of the Palmetto Bend Project need not discuss remote and highly speculative consequences but should be sufficient to enable those who did not participate in compiling the statement to understand the

factors involved and fully consider the significance of such factors. *Sierra Club v. Morton*, 431 F. Supp. 11 (S.D. Tex. 1975).

The environmental impact statement for the first phase of the Teton Dam Project was not inadequate because it lacked a discussion of the environmental impact of the development of docks, second homes and corresponding structures and facilities as well as an analysis of the land use pattern changes that could result from the project. Second home development and its consequences in connection with this project are only remote possibilities. An environmental impact statement is required only to include a reasonably thorough discussion of the significant aspects of the probable environmental consequences and need not consider remote and highly speculative consequences. *Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir. 1974).

It is not necessary that the supporting studies on which an environmental impact statement is based be physically attached to the statement. They only need be available and accessible. *Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir. 1974).

8.—Incorporation by reference

Because it is the essence of the National Environmental Policy Act that the requisite detailed statement gather in one place a discussion of the relative environmental impacts of alternatives, in reviewing the adequacy of the environmental impact statement for the O'Neill Unit, Lower Niobrara Division of the Pick-Sloan Missouri Basin Program, only the document actually entitled "Final Environmental Statement" will be examined. No consideration should be given to the Unit's feasibility report of December 7, 1965, its nine appendices, or the Reevaluation Statement of April, 1971, none of which are attached to or cited in the Final Environmental Statement. Where, however, a conclusion is stated in a Final Environmental Statement and the reader is then directed to another document for data supporting the conclusion, the document, to that extent, should be considered a part of the Statement, if it is accessible to the public. *Save the Niobrara River Association v. Andrus*, 483 F. Supp. 844 (D. Neb. 1979).

9.—Injunctive relief

Nothing in the National Environmental Policy Act, its legislative history or decisional law requires that once an environmental impact statement is found deficient in some respect, however slight, work on the project must be enjoined forthwith. *Environmental Defense Fund, Inc., v. Armstrong*, 352 F. Supp. 50 (N.D. Cal. 1972) and 356 F. Supp. 131 (N.D. Cal. 1973), aff'd., 487 F.2d 814 (9th Cir. 1973), cert. denied, 416 U.S. 974 (1974).

10.—Level of detail

Where questions concerned the degree of detail rather than the lack of it and nothing was presented to cast doubt upon the conclusion that the average annual change in water quantity in the James River in South Dakota due to the Garrison Diversion Unit would be so small as to be virtually unmeasurable, a draft environmental impact statement prepared in 1976 and final environmental impact statements prepared in 1974 and 1979, taken together, adequately put the decisionmakers on notice of the hazards to South Dakota if the project is completed and were sufficient under the requirements of NEPA even though additional facts may have been useful and it would have been desirable for there to have been more explicit recognition of the project's South Dakota impacts. *James River Flood Control Association v. Watt*, 553 F. Supp. 1284 (D. S.Dak. 1982).

Where one of the specific objectives of the Colorado River Storage Project Act, which authorized the Navajo Dam, is to mitigate losses of and improve conditions for the propagation of fish and wildlife, an environmental impact statement prepared in connection with the installation of a powerplant at the Dam was inadequate where it admitted that there would be some adverse impact on fish and wildlife, due to fluctuations in San Juan River flow rates, but failed to supply the detail necessary for informed decision-making. The Bureau cannot evade assessing the environmental consequences of a project under construction by simply deferring to the results of future studies, as once a facility has been completely constructed the economic cost of any alteration may be very great, and one of the purposes of the National Environmental Policy Act was to break the cycle of such incremental decisionmaking. *National Wildlife Federation v. Andrus*, 440 F. Supp. 1245 (D.D.C. 1977).

11.—Water use priorities

The supplementary environmental impact statement which addressed the possible uses for the conservation yield of the New Melones Dam is not deficient because it failed to assign priorities of need for water among service

areas that may potentially use New Melones water because (1) as a practical matter it is impossible to assign such priorities at present, since no diversion of water will occur for at least eight years, (2) the authorizing statute (the Flood Control Act of 1962) itself establishes definite priorities, and (3) the District Court has explicitly retained jurisdiction over the case to insure that data dealing with the operation of the dam is forthcoming in a future or supplemental environmental impact statement, well before the New Melones Dam actually becomes operational. *Environmental Defense Fund, Inc. v. Armstrong,* 356 F. Supp. 131 (N.D. Cal. 1973), aff'd, 487 F.2d 814 (9th Cir. 1973), cert. denied, 416 U.S. 974 (1974).

26. Continuing appropriations

Congress has full authority to fund a Bonneville Power Administration transmission project before an environmental impact statement has been completed. *County of Missoula v. Johnson,* U.S.D.C., D. Mont., CV-81-35-BU, January 28, 1982. [Editor's note: This decision was affirmed on appeal on August 8, 1983, No. 82-3088, 9th Cir. (unpublished opinion)]

The fact that, in the Public Works for Water and Power Development and Research Act, 1978, Congress appropriated funds for the construction of the Garrison Diversion Unit, Missouri River Basin Project, while a suit challenging the sufficiency of the environmental impact statement for the Unit was pending does not preclude judicial review by evidencing a congressional determination that the statement complies with the National Environmental Policy Act because 1) Congress cannot legislate through the appropriations process, 2) there is no indication in the legislative history of the 1978 Act that Congress ever reviewed or debated the impact statement at issue, and 3) even if Congress makes the ultimate decision to proceed with the project it remains the role of the courts, exclusively, to determine the adequacy of the environmental impact statement. *National Audubon Society v. Andrus,* 442 F. Supp. 42 (D. D.C. 1977).

27. Construction during preparation

The Act of August 5, 1965 authorizing the Garrison Diversion Unit permitted the Secretary to exercise limited discretion over the timing of construction of the project to the extent authorized by the National Environmental Policy Act. The Secretary had authority to defer construction until additional environmental impact statements were prepared and perhaps also until Congress had a reasonable opportunity to reconsider the project authorization in light of newly available environmental information, but he was not authorized to promise unconditionally to defer construction until 60 days after Congress took action on the project authorization, regardless of how long congressional action may be deferred. Thus, where the Secretary agreed in a court stipulation to halt project construction until he prepared additional environmental and other studies, submitted legislation to Congress regarding reauthorization or modification of the project and 60 days had elapsed after Congress acted on such legislation, the agreement was read to include the implied condition that if Congress failed to act after having had a reasonable opportunity to reconsider the 1965 authorization, the parties shall no longer be bound by the stipulation. Inasmuch as the Secretary had prepared the additional studies and submitted them to Congress, the record showed clearly that the controversy over the project was brought to the attention of Congress, and Congress did not act after a reasonable opportunity to do so, the condition was met and the Secretary's obligations under the stipulation were discharged. *National Audubon Society, Inc., v. Watt,* 678 F.2d 299 (D.C. Cir. 1982).

Where the 28-page environmental impact statement for the first stage of the Palmetto Bend Project was being challenged in a lawsuit, the Bureau of Reclamation was not obligated to halt project construction while it prepared a revised 142-page statement. Such requirement might compromise the National Environmental Policy Act's goal of full disclosure in a situation where it was unclear whether a proposed change would first require a supplement to the environmental impact statement, in which case work could continue on the project, or a new environmental impact statement, which would provide more complete disclosure at the cost of a break in the project timetable. *Sierra Club v. Morton,* 431 F. Supp. 11 (S.D. Tex. 1975).

28. Exemptions from filing

The Bureau of Reclamation's drawdown of carryover storage at Clair Engle Lake and resultant decrease in releases into the Trinity River is a management activity expected to have an effect in mitigating drought-related losses and damages to the Central Valley Proj-

ect. As such, the Bureau is specifically exempted from filing an environmental impact statement by section 5 of the Emergency Drought Act (Public Law 95-18, 91 Stat. 36), at least until the authority under that Act expires on September 30, 1977. *County of Trinity v. Andrus,* 438 F. Supp. 1368 (E.D. Cal. 1977).

29. "Local agency"

A port district is not a "local agency" within the meaning of section 102(2)(C) of NEPA whose comments and views have to be obtained because it is not required to develop and enforce environmental standards. *Port of Astoria v. Hodel,* 595 F.2d 467, 475-76 (9th Cir. 1979), affirming *Port of Astoria v. Hodel,* Civil No. 75-349, U.S.D.C. Oregon (August 26, 1975).

30. Purposes

An environmental impact statement serves four purposes: 1) to ensure that agency officials will be acquainted with the trade-offs which will have to be made if any particular line of action is chosen; 2) to explicate fully the agency's course of inquiry, analysis, and reasoning, thus opening up the agency's decisionmaking process to critical evaluation by those outside the agency, including the public; 3) to supply a convenient record for courts to use in reviewing agency decisions on the merits; and 4) to provide full disclosure to the public of environmental issues. *Save the Niobrara River Association v. Andrus,* 483 F. Supp. 844 (D. Neb. 1979).

There are two purposes to be served by an environmental impact statement. First, it should provide decisionmakers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in light of its environmental consequences. Second, the statement should provide the public with information on the environmental impact of a proposed project as well as encourage public participation in the development of that information. *Trout Unlimited v. Morton,* 509 F.2d 1276 (9th Cir. 1974).

31. Relationship with other laws

Suits challenging the execution by the Administrator of the Bonneville Power Administration of long-term power contracts required by section 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act on the grounds that the failure to issue environmental impact statements violated the National Environmental Policy Act should be filed with the 9th Circuit Court of Appeals and not the District Court. *National Wildlife Federation v. Johnson,* 548 F. Supp. 708 (D. Ore. 1982) [Editor's note: This holding was affirmed in *Forelaws on Board v. Johnson,* 709 F. 2d. 1310 (9th Cir. 1983).]

Even a good faith attempt to comply with the environmental impact statement requirements of section 102 of the National Environmental Policy Act may be insufficient to satisfy the reporting requirements of the Fish and Wildlife Coordination Act. The latter Act directs that Congress be directly informed of environmental effects of stream modification, a policy which may not be duplicated by the National Environmental Policy Act. Thus, a report under the Coordination Act remains mandatory for the installation of a powerplant at the Navajo Dam, Colorado River Storage Project, which would unquestionably affect wildlife resources by altering the flow rates of the San Juan River. *National Wildlife Federation v. Andrus,* 440 F. Supp. 1245 (D. D.C. 1977).

32. Scope

Segmentation of an environmental impact statement on Bonneville Power Administration's Colstrip transmission lines is proper where the segment has independent utility, the length selected assures adequate opportunity for consideration of alternatives, and the segment fulfills important state and local needs. *County of Missoula v. Johnson,* U.S.D.C., D. Mont., CV-81-35-BU, January 28, 1982, at 19. [Editor's note: This decision was affirmed on appeal on August 8, 1983, No. 82-3088, 9th Cir. (unpublished opinion.)]

The agency's decision to fulfill the requirements of the National Environmental Policy Act for proposed Federal water projects in the Colorado River Basin through project or site-specific environmental impact statements which will discuss and evaluate any cumulative and synergistic environmental impacts, as opposed to a comprehensive environmental impact statement for the entire basin, is subject to judicial review under the arbitrary and capricious standard. *Environmental Defense Fund, Inc. v. Higginson,* 655 F.2d 1244 (D.C. Cir. 1981).

It is reasonable for the Bureau of Reclamation to issue a comprehensive environmental impact statement for the continuing operation of the entire Colorado River Basin Project and not to prepare a site-specific environmental impact statement for the Glen Canyon Dam and Reservoir component of the

project, whose impounded waters form Lake Powell. The Colorado River Basin Project Act itself recognizes the comprehensive nature of the project by 1) providing in section 102(a) that the purpose of the Act is the further comprehensive development of the water resources of the Colorado River Basin and 2) requiring, in section 602(a), that the Secretary of the Interior promulgate criteria for the storage and release of water from all of the storage units of the Colorado River Project, which include units authorized by the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. There is no proposal for criteria or any other major action under the National Environmental Policy Act which involves the Glen Canyon Project singly. Moreover, the courts have recognized the interrelated and comprehensive development of this water resource project. *Badoni v. Higginson,* 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

In preparing the environmental impact statement for the first phase of the Teton Dam Project the Bureau of Reclamation was not required to discuss the environmental impact of the second phase (the facilities identified in section 4(c) of the Act) even though it has been held that a project must be covered in a single statement where it is composed of a series of interrelated steps wherein the initial project depends on subsequent phases and together all phases constitute an integrated plan. Here the first phase is substantially independent of the second as Congress clearly intended that the first phase of this project would be constructed without regard to whether the Secretary ever submits a finding of "feasibility" with regard to the second phase. *Trout Unlimited v. Morton,* 509 F.2d 1276 (9th Cir. 1974).

Whether a final environmental impact statement for the Strawberry Aqueduct and Collection System must also include an evaluation, under the criteria of section 102 of the National Environmental Policy Act, of the Bonneville Unit or perhaps even the entire Central Utah Project, is a mixed question of fact and law. Whether the Strawberry system is a unit unto itself and can stand on its own two feet or, on the contrary, whether it is so intertwined with the rest of the Bonneville Unit and the Central Utah Project that it is but an increment of the larger plan, is essentially a fact question. Whether the "facts" as thus found by the trial court permit the Strawberry system to be classified as an independent "major Federal action" is essentially a question of law. *Sierra Club v. Stamm,* 507 F.2d 788 (10th Cir. 1974).

The Strawberry Aqueduct and Collection System has an independent utility of its own as a collection and conveyance system of waters from the designated Uinta Mountain streams for storage in the enlarged Strawberry Reservoir for release and use in the Bonneville Basin. Such system can operate and function separately from the remaining unconstructed systems of the Bonneville Unit or other units of the Central Utah Project. The termini of the Strawberry system, comprising the Soldier Creek Dam on the westerly end and the Upper Stillwater Reservoir on the easterly end, delineate a reasonable and logical segment of the Bonneville Unit for discussion and analysis of the environmental impacts resulting therefrom, which remain unchanged regardless of the systems to be constructed for delivery and use of project waters within the Bonneville Basin. Thus, the Strawberry system is an independent "major Federal action" for the purposes of section 102 of the National Environmental Policy Act and the Bureau of Reclamation's final environmental impact statement sufficiently covered the Currant Creek Dam feature of the Strawberry Aqueduct and Collection system by discussing the entire Strawberry system. It was not required to evaluate the Bonneville Unit or the Central Utah Project. *Sierra Club v. Stamm,* 507 F.2d 788 (10th Cir. 1974).

The National Environmental Policy Act does not require that the environmental impact statement for the New Melones Project be delayed until a comprehensive study of the Central Valley Project, viewing the system of State and Federal water projects as an integrated unit, be made. So long as each major Federal action is undertaken individually and not as an indivisible, integral part of an integrated State-wide system, then the requirements of the Act are determined on an individual major Federal action basis. *Environmental Defense Fund, Inc. v. Armstrong,* 356 F. Supp. 131 (N.D. Cal. 1973), aff'd, 487 F.2d 814 (9th Cir. 1973), cert. denied, 416 U.S. 974 (1974).

33. Standing to sue

A port district concerned about losing tax revenues and a financial guarantee for the purchase of a new dock facility does not have standing to sue to enjoin the Administrator

of the Bonneville Power Administration from signing an amendment to a contract with the Alumax Pacific Corporation to supply power for an aluminum reduction plant at a new location outside the district for failure to prepare an environmental impact statement because the district's alleged injuries are not environmental and therefore are outside the zone of interests to be protected by NEPA. However, an environmental organization whose members spend leisure time in, and individual plaintiffs residing in, the county where the new plant will be located, and a broadcasting company alleging the new plant will interfere with its broadcasts, do have standing to sue. *Port of Astoria v. Hodel,* 595 F.2d 467, 475-76 (9th Cir. 1979), affirming *Port of Astoria v. Hodel,* Civil No. 75-349, U.S.D.C. Oregon (August 26, 1975).

34. When required—Case or controversy

Section 110 of Public Law 95-465, which provides that, irrespective of the National Environmental Policy Act, water resource projects or project features within the Colorado River Basin may proceed to completion so long as a site specific environmental impact statement has been filed, prevents the construction of such projects or features from being delayed by the preparation of a basin-wide environmental impact statement. Consequently, an action by the State of Utah for a declaratory judgment that the National Environmental Policy Act does not require a comprehensive basin-wide impact statement for the entire Colorado River Basin does not present a justiciable controversy as no basin-wide impact statement had yet been funded and no injury could occur until after the earliest date for completion of the basin-wide statement, 1985. *Utah v. Andrus,* 636 F.2d 276 (10th Cir. 1980).

35.—Federal responsibility

By entering into a contract to supply power to the Alcoa magnesium smelting plant at Addy, Washington, and to construct the transmission line to the plant, the Bonneville Power Administration has so federalized the entire project that it has become "major Federal action" requiring a federally responsible environmental impact statement on it which cannot be satisfied by a statement prepared purely by and for the State of Washington and not considered, approved and adopted by BPA. *Sierra Club v. Hodel,* 544 F.2d 1036 (9th Cir. 1976).

36.—Generally

Where it was conceded that additional NEPA analysis would be required prior to making a decision to continue development of the Garrison Diversion Unit in stages so that the first phase thereof would preclude return flows from flowing into Canada and cause additional return flows in the James River in South Dakota, although the question was a close one, the Secretary had not yet gone beyond mere contemplation and accompanying study of such a course of action so as to trigger additional NEPA compliance at that time. *James River Flood Control Association v. Watt,* 553 F. Supp. 1284 (D. S.Dak. 1982).

A separate environmental impact statement is not required for Memoranda of Understanding between the Bonneville Power Administration and the Bureau of Land Management and between BPA and the Bureau of Reclamation regarding the granting of rights-of-way for transmission lines, or for applications for rights-of-way for specific lines. *Columbia Basin Land Protection Association v. Schlesinger,* 643 F.2d 585, 596-98 (9th Cir. 1981), affirming *Columbia Basin Land Protection Association v. Kleppe,* 417 F. Supp. 46 (E.D. Wash. 1976).

A proposed major Federal action will significantly affect the quality of human life and thereby necessitate the filing of an environmental impact statement when reasonably expected environmental consequences would affect a decision by the Federal agency concerning the need for, or the proposed location or design of, the proposed Federal action. In order to apply this test there must be an analysis of: the need for the Federal proposal; the environmental consequences which can reasonably be expected to be generated; and the availability of alternatives to achieve the objectives of the Federal proposal. Thus the Department of Interior's proposal to apply the herbicide 2,4—dichlorophenoxyacetic acid to the public water supply at the Fort Cobb Reservoir in order to obtain data on the residual levels and rate of dissipation of the herbicide in fish and hydro-soil and to control the growth of Eurasian watermilfoil, although a major Federal action, does not require the filing of an environmental impact statement as it will not significantly affect the human environment. The evidence demonstrates that (1) the presence of the watermilfoil represents a serious problem, (2) in the quantity planned for application, the concentration of the herbicide in the reservoir will not exceed the established safe tolerance for human consumption as established by the Environmental Protection Agency, and (3) four alternatives

to herbicide control were considered but rejected. *Citizens Against 2, 4-D v. Watt,* 527 F. Supp. 465 (W.D. Okla. 1981).

No environmental impact statement is required on the decision of the Southeastern Power Administration to allocate power from the Carters, Jones Bluff, and West Point projects to preference customers within the service areas of the four Southern Companies. *Greenwood Utilities Commission v. Schlesinger,* 515 F. Supp. 653, 662-63 (M.D. Ga. 1981). [Editor's note: This holding was affirmed sub nom. *Greenwood Utilities Commission v. Hodel,* 764 F.2d 1459, 1465 (11th Cir. 1985)]

The Pacific Northwest Electric Power Planning and Conservation Act is fundamentally and conceptually different from the approach contemplated by the Bonneville Power Administration in Phase 2 of the Hydro Thermal Power Program. It is in part a legislative solution to the impasse created by the injunction previously entered in this case pending preparation of a programmatic environmental impact statement (EIS) on Phase 2. Such an EIS is no longer necessary. *Natural Resources Defense Council v. Munro,* 520 F. Supp. 17 (D. Ore. 1981).

Where the Bonneville Power Administration (BPA), which supplies about one-half of the electric power consumed in the Pacific Northwest region and provides about four-fifths of the high-voltage bulk transmission capacity in the region, has entered into cooperative efforts with the public and private utilities and BPA's direct-service industries for the planning, construction and operation of the region's power facilities as if they were under a single ownership to meet forecasted electrical power needs of the region, there exists a major "Federalized" regional proposal which requires the preparation of an environmental impact statement (EIS). The fact that details of the specific agreement of December 14, 1973 termed "Phase 2" of the Hydro-Thermal Power Program (HTPP) may have changed does not eliminate the requirement for an EIS so long as the basic concepts do not change. *Natural Resources Defense Council, Inc. v. Hodel,* 435 F. Supp. 590 (D. Ore. 1977), affirmed sub nom. *Natural Resources Defense Council, Inc. v. Munro,* 626 F.2d 134 (9th Cir. 1980).

Where the Government enters into option contracts for the sale of water for industrial uses from the Yellowtail and Boysen Reservoirs, Missouri River Basin Project, an environmental impact statement must be prepared when the contract is executed and cannot be delayed until the option is exercised. The execution of the contract itself constitutes a major Federal action under the National Environmental Policy Act since the Government, by the terms of the contract, thereby enters into an irreversible and irretrievable commitment of the availability of the water. While the details of the option holder's future use of the diverted water may not be known at the time of contract execution, it is at that time that the Government must decide among various potential users and, in so doing, must conjecture as to the possible effects of commitment to one user versus another. *Environmental Defense Fund, Inc. v. Andrus,* 596 F.2d 848 (9th Cir. 1979).

The preparation of an environmental impact statement is required in conjunction with both the Industrial Water Marketing Plan and the option contracts entered into thereunder to sell water from the Yellowtail and Boysen Reservoirs for industrial use. Any uncertainty which may exist about the details of subsequent use of the diverted water does not obviate the importance of the decision to divert and the necessity to evaluate the environmental consequences of that decision. Here, there is more than mere "contemplation" of Federal action; there is a developed marketing program and executed option contracts. *Environmental Defense Fund, Inc v. Andrus,* 596 F.2d 848 (9th Cir. 1979).

An amendment to a contract with the Alumax Pacific Corporation requiring the Bonneville Power Administration to supply power and build transmission lines to an aluminum reduction plant at a new location is a major Federal action requiring the preparation of an environmental impact statement on the plant itself. *Port of Astoria v. Hodel,* 595 F.2d 467, 477 (9th Cir. 1979), affirming *Port of Astoria v. Hodel,* Civil No. 75-349, U.S.D.C. Oregon (August 26, 1975).

An amendment to a contract with the Alumax Pacific Corporation under which the Bonneville Power Administration (BPA) will provide a new form of industrial firm power service to an aluminum reduction plant at a new location is a major Federal action because it creates a new commitment of BPA's energy resources, and because it sets the stage for the initiation of the proposed Phase 2 of the Hydro Thermal Power Program, particularly through the "third quartile" provisions whereby industrial customers would have the option to buy power from new thermal power

plants or suffer restrictions in power service. Therefore, BPA must prepare an environmental impact statement on the relation between industrial firm power contracts and the coordinated regional activities known as Phase 2 as well as an assessment of the additional power commitments. *Port of Astoria v. Hodel*, 595 F.2d 467, 477-480 (9th Cir. 1979), affirming *Port of Astoria v. Hodel*, Civil No. 75-349, U.S.D.C. Oregon (August 26, 1975).

The change in recreation management at Lake Berryessa from Napa County to the United States, in accord with section 601 of the Reclamation Development Act of 1974, and subsequent Bureau of Reclamation directives restricting the use of houseboats on the lake and ordering the removal of privately-owned floating structures from the lake do not constitute major Federal actions having a significant effect on the quality of the human environment, within the meaning of section 102 of the National Environmental Policy Act. *Lake Berryessa Tenants' Council v. United States*, 588 F.2d 267 (9th Cir. 1978).

No environmental impact statement was required on the decision of the Secretary of the Interior to deny the request of the City of Santa Clara for an allocation of nonwithdrawable power from the Central Valley Project (CVP) because it is highly improbable that one allocation scheme will have a more deleterious impact than any other when the total geographic area served by the CVP is considered. *City of Santa Clara, California v. Andrus*, 572 F.2d 660, 679-80 (9th Cir. 1978), affirming *City of Santa Clara v. Kleppe*, 418 F. Supp. 1243 (N.D. Cal. 1976), cert. denied sub nom. *Pacific Gas and Electric Co. v. City of Santa Clara*, 439 U.S. 859 (1978).

A reallocation of power from the California-Pacific Utilities Company (Cal-Pac) to preference customers is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act, and hence neither preparation of an environmental impact statement nor public hearings was required. *The Fort Mojave Indian Tribe, et al. v. United States*, U.S.D.C., C.D. California, CV77-4790 ALS (July 6, 1978).

No environmental impact statement was required prior to the signing of a contract between the Northern Colorado Water Conservancy District and Municipal Subdistrict with the United States which provided that the surplus capacity of the Colorado-Big Thompson project could be used to carry water from the Western slope to the Eastern slope of Colorado if the Subdistrict could obtain the necessary water rights, and which further provided that no water should be transported until the final environmental statement had been approved, because: (1) the contract does not constitute a recommendation or report on a major Federal action but rather is merely an agreement which precipitated the planning for the diversion of water which the Subdistrict has yet to obtain. Moreover, until the source of the water to be transferred has been identified it is impossible to determine definitely the overall environmental impacts; (2) the contract expressly recognizes that an environmental impact statement must be prepared and approved, and the agency cannot recommend the proposal until the statement has been approved; and (3) in a practical sense, it would be overly burdensome to require the agency to prepare an environmental impact statement before the plans for the proposal are prepared. *Colorado River Water Conservation District v. United States*, 539 F.2d 907 (10 Cir. 1977).

Where the Bonneville Power Administration entered into a contract to supply up to 124,000 kilowatts of interruptible power to Alcoa's proposed magnesium smelting plant at Addy, Washington, it was not necessary for an environmental impact statement to consider that the contract may have environmental consequences because, in the event massive deficits in hydroelectric power were to occur, Bonneville would need to divert power from municipal use to the smelting operations and thereby cause utilities to resort to pollution-generating thermal or nuclear fuel sources, as such possibilities are too remote and conjectural. Moreover, by definition, interruptible power cannot be made available to the smelting facilities until prime and second-preference commitments have been filled. Nor does the contract violate the National Environmental Policy Act because it was not accompanied by an environmental statement showing the interrelationship between the power allotments to Alcoa and other power allotments to users in other regions of the system and even those outside the system under the Pacific Northwest-Pacific Southwest Intertie agreement. Even though there is a general Pacific-Northwest Region to which Bonneville supplies a great amount of hydropower, there is no evidence of a master plan for development of the region, either by geographical area, by customer, or by percentage

of total power generation capacity. *Sierra Club v. Hodel*, 544 F.2d 1036 (9th Cir. 1976).

An environmental impact statement is not required for the construction of a fence on the boundary line of 6,816.5 acres of land condemned by the United States as part of the Heron Reservoir, San Juan-Chama Project, as 1) the entire project, including the fencing, was planned and scheduled long before January 1, 1970, the date the National Environmental Policy Act became effective, 2) it is unreasonable to assume that Congress would intend that the Government, having acquired fee simple title to this land for the purpose of constructing a reservoir and for the additional purpose of protecting wildlife, would now be required to have an environmental study made on a relatively small part of the entire project—the fencing of the boundary lines—and 3) the evidence indicates that the creation of the fence will enhance rather than detract from proper environmental control of the area. *Maddox v. Bradley*, 345 F. Supp. 1255 (N.D. Tex. 1972).

37.—Legislative proposals

No environmental impact statement was required to accompany the proposed "Federal Water Projects Financing Act of 1979," which would require States within whose boundaries projects are located to make certain contributions to the implementation costs of the project, as this cost-sharing proposal applies only to projects authorized after it is enacted. Since the States could respond to this legislation in a variety of ways, it is impossible to predict presently whether or how this legislation will significantly affect the quality of the human environment. Moreover, when a specific project is proposed under the terms of this proposed law an environmental impact statement will be required if the project will significantly affect the quality of the human environment. *North Dakota v. Andrus*, 483 F. Supp. 255 (D. N.D. 1980).

38.—Ongoing programs and activities

Environmental impact statements are required for the Industrial Water Marketing Plan and all option contracts entered into thereunder to sell water from the Yellowtail and Boysen Reservoirs, Missouri River Basin Project, even though the plan and some contracts were executed before January 1, 1970. Both the overall plan and the individual contracts are ongoing programs which require continuing attention and action and must therefore comply with the National Environmental Policy Act even though initiated before its enactment. *Environmental Defense Fund, Inc., v. Andrus*, 596 F.2d 848 (9th Cir. 1979).

The Bureau of Reclamation's drawdown of carryover storage capacity at Clair Engle Lake to mitigate drought damages does not necessitate the preparation of an environmental impact statement even after the expiration of the Emergency Drought Act's exemption from the filing requirements of § 102 of the National Environmental Policy Act for such activities. Although the latter Act may be applicable, in limited circumstances, to a project initiated before it became effective in 1970, the present action is neither a major incremental stage of project development nor a revision or extension of the original facilities. Rather, an environmental impact statement is not required where, as here, the Bureau is simply operating the Trinity River Division within the range originally available pursuant to the authorizing statute, in response to changing environmental conditions. *County of Trinity v. Andrus*, 438 F. Supp. 1368 (E.D. Cal. 1977).

As the National Environmental Policy Act applies to all ongoing "major Federal actions," in considering whether an environmental impact statement is required for a project authorized before the Act became effective on January 1, 1970, the extent to which the project has been completed is a factor to be carefully weighed. Thus, an impact statement is required for the first stage of the Palmetto Bend Project, authorized in 1968, since, while land had been purchased and cleared and some roads and railroad tracks relocated, no construction had been commenced. *Sierra Club v. Morton*, 431 F. Supp. 11 (S.D. Tex. 1975).

Whether the National Environmental Policy Act is to be retroactively applied, so that the continuing operation of the Glen Canyon Dam is deemed a major Federal action "significantly affecting the quality of the human environment" and therefore requiring an environmental impact statement, is a question which must be determined, in the first instance, by the Department of the Interior, the agency operating the project. Until such determination has been made or the Department has in some formal manner indicated its refusal to make it, the challenge to the Dam's continuing operation is not ripe for judicial consideration. *Grand Canyon Dorries, Inc. v. Walker*, 500 F.2d 588 (10th Cir. 1974).

No environmental impact statement was required for the construction of the Molokai Irrigation system even though it was financed, in part, under the Small Reclamation Projects Act of 1956, as the repayment contract was executed in 1963 and the project completed in 1969, before enactment of the National Environmental Policy Act. That Hawaii's repayment obligation continued after 1969 and that, as provided by section 5(d) of the 1956 Act, the Secretary of the Interior had a continuing right to interject himself into the affairs of the system in the event of noncompliance with the repayment contract, is insufficient to render the Secretary's decision not to participate in negotiations between the Board of Land and National Resources of Hawaii and the Kaiuakoi Corporation for rental of system facilities a "major Federal action." *Molokai Homesteaders Cooperative Association v. Morton*, 506 F.2d 572 (9th Cir. 1974).

Although the National Environmental Policy Act may be applicable to continuing activities, it is not meant to be retroactive. Thus the Bonneville Power Administration was not required to file an environmental impact statement evaluating its construction of a 230 kilovolt power transmission line from Bandon to Gold Beach, Oregon, where 1) Congress demonstrated its approval of the project in 1967 when it authorized the appropriation of funds for the line and by January 1, 1970, when the Act became effective, money had been appropriated for almost all phases of the project, including most of the construction, and 2) the government had acquired easements over twenty-two of the proposed parcels of land on the proposed line before January 1, 1970. The fact that the government did not let contracts for clearing the new right-of-way and for construction of the line until early in 1970 is insufficient to require the filing of an environmental impact statement as these activities constitute merely a small portion of the work required to complete the project. Congress did not intend the Act to apply to "major Federal actions" which had reached this stage of completion as of the date of its enactment. *Investment Syndicates, Inc. v. Richmond*, 318 F. Supp. 1038 (D. Ore. 1970).

39.—Supplemental EIS

Where the ultimate operation of a project is still in doubt at the time the environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act is filed, the initial environmental impact statement should be viewed as an interim statement, the first part of a two-step process whereby the responsible Federal officials would first give their best estimate of the uses to which the project will be put. Then, prior to actual use, a revised or supplemental statement should be filed either reaffirming those estimates or describing the newer proposed uses and their environmental impacts. Thus, where the initial environmental impact statement for the New Melones Dam failed to address the tentative alternative uses for, and the environmental impact of, the 285,000 acre feet of conservation yield, the court may require the filing of a supplemental impact statement to discuss these issues, notwithstanding the Government's proposal to file a separate environmental impact statement at a point nearer in time to the dam's actual operation, some years in the future. *Environmental Defense Fund, Inc., v. Armstrong*, 352 F. Supp. 50 (N.D. Cal. 1972), aff'd, 487 F.2d 814 (9th Cir. 1973), cert. denied sub nom. *Environmental Defense Fund, Inc. v. Stamm*, 416 U.S. 974 (1974).

51. Procedural compliance—Alternative studies

The claims of the Environmental Defense Fund that the Secretary of the Interior, the Bureau of Reclamation and the Environmental Protection Agency should evaluate and develop on-farm salinity control techniques as "alternatives" to current salinity control programs as required by the 1972 policy to be implemented under section 201(a) of the Colorado River Basin Salinity Control Act, and as required by section 102(2)(E) of the National Environmental Policy Act, are properly dismissed because on-farm management measures comprise an integral part of the current program itself. *Environmental Defense Fund, Inc. v. Costle*, 657 F.2d 275, 296-98 (D.C. Cir. 1981).

52.—Judicial review

The National Environmental Policy Act does not give the courts the ultimate authority to approve or disapprove construction of a properly authorized project where an adequate environmental impact statement has been prepared and circulated in accordance with the requirements of the Act. *Environmental Defense Fund, Inc. v. Armstrong*, 487 F.2d 814 (9th Cir. 1973), cert. denied, 416 U.S. 974 (1974).

Sec. 103. [Present authorities, regulations, policies, procedures to be reviewed—Proposed measures to President by July 1, 1971.]—All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act. (83 Stat. 854; 42 U.S.C. § 4333)

Sec. 104. [Certain specific statutory obligations not affected.]—Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency. (83 Stat. 854; 42 U.S.C. § 4334)

Sec. 105. [Policies and goals supplemental to existing authorizations.]—The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies. (83 Stat. 854; 42 U.S.C. § 4335)

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. [President to submit annual Environmental Quality Report to Congress.]—The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. (83 Stat. 854; 42 U.S.C. § 4341)

Sec. 202. [Council on Environmental Quality established—Membership.]—There is created in the Executive Office of the President a Council

on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. (83 Stat. 854; 42 U.S.C. § 4342)

Sec. 203. [Employment of officers, employees, experts and consultants.]—(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council. (83 Stat. 855; Act of July 3, 1975, 89 Stat. 258; 42 U.S.C. § 4343)

Sec. 204. [Duties and functions of Council.]—It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request. (83 Stat. 855; 42 U.S.C. § 4344)

Sec. 205. [Consultation with other organizations—Utilization of services, facilities and information of other organizations to avoid duplication.]—In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies. (83 Stat. 855; 42 U.S.C. § 4345)

Sec. 206. [Compensation of members.]—Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315). (83 Stat. 856; 42 U.S.C. § 4346)

EXPLANATORY NOTE

Error in the Text. The word "or" following "Level IV" and preceding "the Executive Schedule Pay Rates" should probably be "of".

Sec. 207. [Reimbursement for travel.]—The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council. (Added by Act of July 3, 1975, § 3, 89 Stat. 258; 42 U.S.C. § 4346a)

Sec. 208. [Expenditures for international activities.]—The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange

programs in the United States and in foreign countries. (Added by Act of July 3, 1975, § 3, 89 Stat. 258; 42 U.S.C. § 4346b)

* * * * *

EXPLANATORY NOTE

Legislative History. S. 1075, Public Law 91-190 in the 91st Congress. Reported in Senate from Interior and Insular Affairs July 9, 1969; S. Rept. No. 91-296. Passed Senate July 10, 1969. Passed House, amended, September 23, 1969. House asks for a conference September 23, 1969. Senate agrees to a conference October 8, 1969. Conference report filed December 17, 1969; H.R. Rept. No. 91-765. Senate agrees to conference report December 20, 1969. House agrees to conference report December 22, 1969. Companion bill H.R. 12549 reported in House from Merchant Marine and Fisheries July 11, 1969; H.R. Rept. No. 91-378.

INCREASED AUTHORIZATION, MISSOURI RIVER BASIN PROJECT

An act to increase the authorization for appropriation for continuing work in the Missouri River Basin by the Secretary of the Interior. (Act of March 25, 1970, Public Law 91-218, 84 Stat. 75)

[Sec. 1. Appropriation authorization—Limitation.]—There is hereby authorized to be appropriated for fiscal years 1971 and 1972 the sum of $32,000,000 for continuing the works in the Missouri River Basin to be undertaken by the Secretary of the Interior pursuant to the comprehensive plan adopted by section 9(a) of the Act approved December 22, 1944 (Public Law Numbered 534, Seventy-eighth Congress), as amended and supplemented by subsequent Acts of Congress. No part of the funds hereby authorized to be appropriated shall be available to initiate construction of any unit of the Missouri River Basin project, whether included in said comprehensive plan or not. (84 Stat. 75)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in the text, which authorized the comprehensive development of the Missouri River Basin, appears in Volume II at page 806.

Legislative History. S. 3427, Public Law 91-218, in the 91st Congress. Reported in Senate from Interior and Insular Affairs February 25, 1970; S. Rept. No. 91-709. Passed Senate March 3, 1970. Passed House March 16, 1970. Companion bill H.R. 15689 reported in House from Interior and Insular Affairs March 2, 1970; H.R. Rept. No. 91-857.

ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970

[Extracts from] An act to amend the Federal Water Pollution Control Act, as amended, and for other purposes. (Act of April 3, 1970, Public Law 91-224, 84 Stat. 91)

* * * * *

TITLE II—ENVIRONMENTAL QUALITY

SHORT TITLE

Sec. 201. This title may be cited as the "Environmental Quality Improvement Act of 1970." (84 Stat. 114; 42 U.S.C. § 4371 note)

FINDINGS, DECLARATIONS, AND PURPOSES

Sec. 202. (a) The Congress finds—

(1) that man has caused changes in the environment;

(2) that many of these changes may affect the relationship between man and his environment; and

(3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this title are—

(1) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91-190. (84 Stat. 114; 42 U.S.C. § 4371)

OFFICE OF ENVIRONMENTAL QUALITY

Sec. 203. (a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this title referred to as the "Office"). The Chairman of the Council on

Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Bureau of the Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this title and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialists or expert shall be paid at a rate in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91-190;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) in carrying out his functions. (84 Stat. 114; 42 U.S.C. § 4372)

EXPLANATORY NOTE

References in the Text. Section 3648 of the Revised Statutes (31 U.S.C. § 529), referred to in subsection (e) of the text, prohibits the advance of public funds for any purpose unless specifically authorized. The section appears in Volume III at page 1962. It has been recodified as 31 U.S.C. § 3324 and appears as such in the new Appendix in Supplement I. Section 3709 of the Revised Statutes (41 U.S.C. § 5), also referred to in subsection (e) of the text, requires purchases and contracts for supplies and services for the Government to be made or entered into only after advertisement. The section appears in Volume III at page 1987 and in the new Appendix in Supplement I.

REPORT

Sec. 204. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report. (84 Stat. 115; 42 U.S.C. § 4373)

* * * * *

Reference in the Text. Public Law 91-190, referred to in the text, is the National Environmental Policy Act of 1969 (Act of January 1, 1970, 83 Stat. 852), which appears in Volume IV in chronological order.

Legislative History. H.R. 4148, Public Law 91-224 in the 91st Congress. Reported in House from Public Works March 25, 1969; H.R. Rept. No. 91-127. Passed House April 19, 1969. Passed Senate amended, October 8, 1969. Senate asks for a conference October 8, 1969. House agrees to a conference October 8, 1969. Conference report filed March 24, 1970; S. Rept. No. 91-940. Senate agrees to conference report March 24, 1970. House agrees to conference report March 25, 1970. Companion bill S. 7 reported in Senate from Public Works August 7, 1969; S. Rept. No. 91-351.

FORT BELKNAP INDIAN IRRIGATION PROJECT

An act to authorize the transfer of the Brown unit of the Fort Belknap Indian irrigation project on the Fort Belknap Indian Reservation, Montana, to the landowners within the unit. (Act of May 14, 1970, Public Law 91-251, 84 Stat. 216)

[Sec. 1. Secretary authorized to convey Brown Unit—Grantee assumes full responsibility for unit.]—The Secretary of the Interior is authorized to convey all of the right, title, and interest of the United States in the facilities of the Brown unit of the Fort Belknap Indian irrigation project, located in township 28 north, ranges 23 and 24 east, Montana principal meridian, including, but not limited to, easements, rights-of-way, canals, laterals, drains, structures of all kinds, and water rights held for the benefit of the unit, to an organization or association having form and powers satisfactory to the Secretary which represents the owners of the lands served by the unit. As a condition to said conveyance, the grantee organization or association shall assume full and sole responsibility for the care, operation, and maintenance of the unit upon conveyance, and shall hold the United States free of all loss or liability for damages or injuries, direct or consequential, caused by the existence or operation of the unit or any of its features or structures, from and after the date of its conveyance. (84 Stat. 216)

Sec. 2. [Secretary authorized to cancel all charges upon transfer.]—Upon conveyance of the Brown unit of the Fort Belknap Indian irrigation project as provided for in section 1 of this Act, the Secretary is authorized to cancel all accrued operation and maintenance charges and all construction charges with respect to the said unit. (84 Stat. 216)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3007, Public Law 91-251 in the 91st Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 91-1020. Reported in Senate from Interior and Insular Affairs; S. Rept. No. 91-782. Passed Senate April 27, 1970. Passed House May 4, 1970.

MERLIN DIVISION, ROGUE RIVER BASIN PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the Merlin division, Rogue River Basin project, Oregon, and for other purposes. (Act of May 28, 1970, Public Law 91-270, 84 Stat. 273)

[Sec. 1. Merlin division, Rogue River Basin project, authorized.]—For the purposes of providing irrigation water for approximately nine thousand three hundred acres, flood control, area redevelopment, and providing municipal and industrial water supply, fish and wildlife enhancement, and recreation benefits, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902 (32 Stat. 388), and Act amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain the Merlin division, Rogue River Basin project, Oregon. The principal works of the division shall consist of Sexton Dam and Reservoir, diversion and distribution facilities, and drainage facilities. (84 Stat. 273)

EXPLANATORY NOTE

Error in the Text. The word "Act", following "and" and preceding "amendatory", should probably be "Acts".

Sec. 2. [Repayment period—Minimum assessment—Assistance from Federal Columbia River Power System.]—Irrigation repayment contracts shall provide with respect to any contract unit, for repayment of the irrigation construction costs assigned for repayment to the irrigators over a period of not more than fifty years, exclusive of any development period authorized by law. Irrigation repayment contracts shall further provide for the assessment and collection of a service charge of not less than $40 per annum for each identifiable ownership receiving irrigation service from and through the works of the Merlin division, such charge to be in addition to the repayment capacity of the lands as determined by the Secretary on the basis of studies of the value of water for full-time family-size farm operations. Construction costs allocated to irrigation beyond the ability of irrigators to repay shall be charged to and returned to the reclamation fund in accordance with the provisions of section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707). (84 Stat. 273)

EXPLANATORY NOTE

Reference in the Text. Section 2 of the Act of June 14, 1966, as amended, referred to in the text, establishes a policy for assistance from the Federal Columbia River power system to reclamation projects in the Pacific Northwest. The Act appears in Volume III at page 1870.

Sec. 3. [Recreation facilities—Fish and wildlife conservation and development.]—The conservation and development of the fish and wildlife

resources and the enhancement of recreation opportunities in connection with the Merlin division shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). (84 Stat. 273)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820

Sec. 4. [Water user's organization to operate works in a fashion satisfactory to the Secretary.]—Before the works are transferred to an irrigation water user's organization for care, operation, and maintenance, the organization shall have agreed to operate them in such fashion, satisfactory to the Secretary, as to achieve the benefits to fish and wildlife enhancement, and recreation on which the allocations of costs therefor are predicated, and to operate them in accordance with regulations prescribed by the Secretary of the Army to achieve the benefits to flood control on which the allocation of costs therefor is predicated, and to return the works to the United States for care, operation, and maintenance in the event of failure to comply with the requirements to achieve such benefits. (84 Stat. 273)

Sec. 5. [Power for irrigation pumping.]—Power and energy required for irrigation water pumping for the Merlin division shall be made available by the Secretary from the Federal Columbia River system at charges determined by him. (84 Stat. 273)

Sec. 6. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (84 Stat. 273)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 7. [Appropriation authorization]—There is hereby authorized to be appropriated for construction of the works herein authorized the sum of $28,470,000 (July 1969 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in the costs of construction as indicated by engineering costs indexes applicable to the type of construction involved therein. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of said works. (84 Stat. 274)

EXPLANATORY NOTES

Codification Omitted. This Act originally was codified at 43 U.S.C. §§ 616mmmm to 616ssss but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. H.R. 780, Public Law 91-270, in the 91st Congress. Reported in House from Interior and Insular Affairs April 8, 1970; H.R. Rept. No. 91-986. Passed House April 20, 1970. Reported in Senate from Interior and Insular Affairs May 12, 1970; S. Rept. No. 91-856. Passed Senate May 15, 1970.

TOCKS ISLAND PUMPED STORAGE

[Extracts from] An act authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes. (Act of June 19, 1970, Public Law 91-282, 84 Stat. 310)

* * * * *

Sec. 5. [Tocks Island pumped storage project authorized.]—(a) The project for comprehensive development of the Delaware River Basin, as authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 522, 87th Congress, by section 203 of the Flood Control Act of 1962 (76 Stat. 1182), is hereby modified to permit use of the head and water releases of Tocks Island Reservoir as an incident to a pumped storage hydroelectric power development project by applicant presently seeking approval to undertake such development before the Delaware River Basin Commission, subject to the provisions of this section and the pertinent provisions of the Delaware River Basin Compact and the Federal Power Act, including section 10(e) (16 U.S.C. 803(e)) providing for payment of annual charges to the United States: *Provided.* That the annual charges payable by applicant for use of the Tocks Island project by the aforesaid pumped storage development, including use of project head and water releases, shall be not less than $1,000,000.

(b) The Secretary of the Interior shall insure that the planning and construction of the aforesaid pumped-storage project shall be undertaken in accordance with the conditions and requirements relating to Sunfish Pond and Kittatinny Mountain set forth in paragraph numbered (3)(A) of Resolution Numbered 68–12 adopted October 28, 1968, by the Delaware River Basin Commission: *Provided,* That the Federal Power Commission shall adopt, as part of any license to construct, operate, or maintain the aforesaid pumped-storage project, those requirements and conditions determined by the Secretary of the Interior to be necessary to insure conformance with the provisions of paragraph (3)(A) of such resolution: *Provided further,* That in no event shall the upper pool of the applicant's proposed pumped-storage project be located on land other than that owned by applicant on April 15, 1969.

(c) Any license issued by the Federal Power Commission subject to the provisions of this section shall be conditioned upon the licensee delivering power and energy in an amount not less than, and at a cost not greater than that which would have been delivered from installation of power facilities heretofore authorized, to all preference customers eligible to purchase power from such heretofore authorized facilities: *Provided,* That, for the purposes of this section, the Delaware River Basin Commission will be

considered a preference customer, and the Secretary of the Interior is hereby authorized to allocate such power as may be available under this subsection on a equitable basis among such preference customers.

* * * * *

(d) Power and energy shall be made available by any licensee to the United States free of cost for operation and maintenance of Tocks Island Dam.

(e) The Tocks Island project and the aforesaid pumped-storage development shall be constructed in such a manner as not to preclude installation at any time of power facilities heretofore authorized at Tocks Island Dam and use of its head and water releases for power purposes by the United States.

(f) In carrying out the purposes of this section, the Secretary of the Army and the applicant shall enter into an agreement providing for the payment by the applicant to the United States of such economic costs as may be incurred by the United States in the design, construction, and operation of the Tocks Island Dam necessary to preserve its suitability for the aforesaid pumped-storage development by applicant and power facilities heretofore authorized. In the event a license is not issued for the aforesaid pumped-storage development and the United States constructs the heretofore authorized power facilities, the costs incurred by the United States to preserve the suitability of the project for the installation of such authorized power facilities will be borne by the United States. In the event of failure to reach timely agreement, the Secretary of the Army shall determine the payment to be made to the United States, and the applicant shall be liable therefore: *Provided,* That such determination shall be subject to review by the Federal Power Commission. (84 Stat. 311)

* * * * *

Sec. 11. [Short title.]—This Act may be cited as the "River Basin Monetary Authorization and Miscellaneous Civil Works Amendments Act of 1970". (84 Stat. 313)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 15166, Public Law 91-282 in the 91st Congress. Reported in House from Public Works; H.R. Rept. No. 91-748. Reported in Senate from Public Works; S. Rept. No. 91-895. Passed House December 15, 1969. Passed Senate, amended, May 28, 1970. House concurs in Senate amendments June 4, 1970.

EAST GREENACRES UNIT, RATHDRUM PRAIRIE PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the East Greenacres unit, Rathdrum Prairie project, Idaho, and for other purposes. (Act of June 23, 1970, Public Law 91-286, 84 Stat. 319)

[Sec. 1. East Greenacres unit, Rathdrum Prairie project, authorized.]—For the purposes of providing irrigation water supplies, providing municipal and industrial water, the conservation and enhancement of fish and wildlife resources, and the enhancement of recreation opportunities, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain the East Greenacres unit, Rathdrum Prairie project, Idaho. The principal works of the unit shall consist of wells, regulating reservoirs, the necessary water distribution systems, and related works. (84 Stat. 319)

Sec. 2. (a) [Irrigation repayment contracts—Assistance from Federal Columbia River Power System.]—Irrigation repayment contracts shall provide for repayment of the irrigation construction costs assigned to the irrigators for repayment over a period of not more than fifty years, exclusive of any development period authorized by law. Construction costs allocated to irrigation beyond the ability of irrigators to repay shall be charged to and returned to the reclamation fund in accordance with the provisions of section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707), and from surplus municipal and industrial water revenues as provided by subsection 2(b) of this Act.

(b) [Municipal and industrial repayment contracts—Conditions.]—Municipal and industrial repayment contracts shall provide for repayment of the construction costs allocated to municipal and industrial water supply, with interest, by the municipal and industrial water users over a period of not more than fifty years from the date that water is first delivered for that purpose, pursuant to contracts with municipal corporations, organizations, or other entities as defined in section 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187): *Provided,* That contracts for municipal and industrial water service shall provide that annual payments shall continue at the same rates as long as the irrigation repayment contracts are in effect: *Provided further,* That revenues in excess of those required to repay the allocated municipal and industrial water supply costs with interest and the portion of the annual operation, maintenance, and replacement costs allocated to municipal and industrial water supply shall be returned to the reclamation fund and credited toward the repayment of the construction costs allocated to irrigation which are beyond the ability of the irrigators to repay. Such contracts may be entered into with a qualified entity or entities pursuant to the provision of this Act without regard to the last sentence of subsection

9(c) of the Reclamation Project Act of 1939, supra, and shall be executed before the commencement of construction of the unit.

(c) **[Interest rate.]**—The interest rate used for purposes of computing interest during construction and, where appropriate, interest on the unpaid balance of the reimbursable obligations assumed by non-Federal entities shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (84 Stat. 319)

EXPLANATORY NOTES

Reference in the Text. Section 2 of the Act of June 14, 1966, as amended, referred to in subsection (a) of the text, establishes a policy for assistance from the Federal Columbia River Power System to reclamation projects in the Pacific Northwest. The Act appears in Volume III at page 1870.

Reference in the Text. The last sentence of section 9(c) of the Reclamation Project Act of 1939 (Act of August 4, 1939, 53 Stat. 1187), referred to in subsection (b) of the text, reads: "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." The sentence appears in Volume I at page 648.

Reference in the Text. Section 2(g) of the Reclamation Project Act of 1939 (Act of August 4, 1939, 53 Stat. 1187), also referred to in subsection (b) of the text, defines "organizations" as "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." Section 2(g) appears in Volume I at page 635.

Sec. 3. [Recreation facilities—Fish and wildlife benefits.]—The provision of lands, facilities, and project modifications which furnish outdoor recreation and fish and wildlife benefits in connection with the East Greenacres unit shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213). (84 Stat. 320)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 4. [Power for irrigation pumping.]—Power and energy required for irrigation water pumping for the East Greenacres unit shall be made available by the Secretary from the Federal Columbia River power system at charges determined by him. (84 Stat. 320)

Sec. 5. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Sec-

retary of Agriculture calls for an increase in production of such commodity in the interest of national security. (84 Stat. 320)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 6. [Appropriation authorization.]—There is hereby authorized to be appropriated for construction of the works herein authorized and for the acquisition of necessary land and rights the sum of $4,965,000 (January 1969 prices), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of said unit. (84 Stat. 320)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 9854, Public Law 91-286 in the 91st Congress. Reported in House from Interior and Insular Affairs April 8, 1970; H.R. Rept. No. 91-987. Passed House April 20, 1970. Reported in Senate from Interior and Insular Affairs June 9, 1970; S. Rept. No. 91-920. Passed Senate June 11, 1970.

TOUCHET DIVISION, WALLA WALLA PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the Touchet division, Walla Walla project, Oregon-Washington, and for other purposes. (Act of July 7, 1970, Public Law 91-307, 84 Stat. 409)

[Sec. 1. Touchet division, Walla Walla project, authorized.]—(a) For purposes of supplying irrigation water initially for approximately ten thousand acres of land, providing municipal and industrial water, flood control, the enhancement of fish and wildlife resources, and the enhancement of recreation opportunities, the Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to construct, operate, and maintain the Touchet division of the Walla Walla project, Oregon-Washington, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal works of the division (hereinafter referred to as the project) shall consist of the Dayton Dam and Reservoir, fish passage facilities, a diversion dam, and associated drainage facilities.

(b) The Secretary is authorized to construct the Dayton Dam and Reservoir to the physical limitations of the site and to recognize the cost of providing such additional capacity as a deferred obligation to be paid, in accordance with section 2 of this Act, at such time as the additional storage capacity is contracted for: *Provided*, That until such additional storage capacity is contracted for, operation and maintenance costs attributable to the excess capacity shall be funded and added to the construction costs allocated to deferred capacity.

(c) In order to assure a realization of the fish and wildlife enhancement benefits contemplated by this Act, the Secretary shall adopt appropriate measures to insure the maintenance of a streamflow between Dayton Dam and the mouth of the Walla Walla River that is not less than thirty cubic feet per second unless he determines that a water shortage or other emergencies exist or that lesser flows would be adequate for the maintenance of fish life. (84 Stat. 409)

Sec. 2. [Repayment period—Assistance from Federal Columbia River Power System.]—Irrigation repayment contracts shall provide for repayment of the obligation assumed thereunder with respect to any contract unit over a period of not more than fifty years, exclusive of any development period authorized by law. Construction costs allocated to irrigation beyond the ability of the irrigators to repay shall be charged to and returned to the reclamation fund in accordance with the provisions of section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707). (84 Stat. 409)

EXPLANATORY NOTE

Reference in the Text. Section 2 of the Act of June 14, 1966, as amended, referred to in the text, establishes a policy for assistance from the Federal Columbia River Power Sys-

tem to reclamation projects in the Pacific Northwest. The Act appears in Volume III at page 1870.

Sec. 3. [Fish and wildlife conservation and development—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Touchet division shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). All costs allocated to the enhancement of anadromous fish species shall be nonreimbursable. (84 Stat. 409)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 4. [Interest rate.]—The interest rate used for purposes of computing interest during construction and, where appropriate, interest on the unpaid balance of the reimbursable obligations assumed by non-Federal entities shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption from fifteen years from the date of issue, adjusted to the nearest one-eighth of 1 per centum. (84 Stat. 409)

Sec. 5. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (84 Stat. 410)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec.6. [Appropriation authorization.]—(a) There are hereby authorized to be appropriated to the United States Fish and Wildlife Service, for transfer to the Bureau of Reclamation, such sums as may be required to cover separable and joint construction costs of the Touchet division, Walla Walla project, allocable to the enhancement of anadromous fish as determined by cost allocation studies comparable to those set forth in House Document Numbered 155, Eighty-ninth Congress, second session.

(b) There are authorized to be appropriated to the Bureau of Reclamation for construction of the works involved in the Touchet division $22,774,000 (January 1969 prices), less the amounts authorized by subsection (a) of this section.

(c) The total sums authorized to be appropriated by subsection (a) and subsection (b) of this section shall be plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes, and, in addition thereto, such sums as may be required to operate and maintain such division: *Provided*, That funds appropriated pursuant to the authority contained in subsection (b) of this section shall be expended only if the amount thereof is increased in any given fiscal year by a proportionate amount appropriated pursuant to subsection (a) of this section. (84 Stat. 410)

EXPLANATORY NOTES

Codification Omitted. This Act originally was codified at 43 U.S.C. §§ 616tttt to 616yyyy but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. S. 743, Public Law 91-307 in the 91st Congress. Reported in Senate from Interior and Insular Affairs March 20, 1969; S. Rept. No. 91-99. Passed Senate March 24, 1969. Reported in House from Interior and Insular Affairs March 9, 1970; H.R. Rept. No. 91-884. Passed House, amended, March 16, 1970. Senate asks for a conference April 16, 1970. House agrees to a conference April 23, 1970. Conference report filed June 16, 1970; S. Rept. No. 91-1196. House agrees to conference report June 22, 1970. Senate agrees to conference report June 23, 1970.

EXEMPTION OF CERTAIN STATE-OWNED LANDS FROM EXCESS LAND LAWS

An act to provide for the differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Federal reclamation law, and for other purposes. (Act of July 7, 1970, Public Law 91-310, 84 Stat. 411)

[Sec. 1. Excess land laws not applicable to certain State-owned lands.]—The provisions of Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplemental thereto) which limit the acreage of irrigable land which may receive irrigation benefits from, through, or by means of Federal reclamation works, shall not be applicable to lands owned by States, political subdivisions, and agencies thereof, so long as such lands are farmed, primarily in the direct furtherance of a non-revenue-producing public function, as determined by the Secretary of the Interior; and to the extent that such lands continue to qualify for the exempted status afforded by this section they shall not be deemed to be excess lands for any purposes whatsoever under said reclamation laws. (84 Stat. 411; 43 U.S.C. § 425)

Sec. 2. [State-owned lands under recordable contract.]—Irrigable lands owned by States, political subdivisions, and agencies thereof which do not fall within the provisions of section 1 may receive water from a Federal reclamation project, division, or unit if a valid recordable contract for the sale of such lands within ten years of the date of said contract has been executed under terms and conditions satisfactory to the Secretary of the Interior but without limitation upon selling price.

The purchasers of lands sold under the provisions of this section, or the heirs and devisees of such purchasers, if otherwise eligible under reclamation law to receive project water for the lands purchased, shall not be disqualified for delivery of water by reason of the amount of the purchase price paid for said lands. (84 Stat. 411; 43 U.S.C. § 425a.)

Sec. 3. [Lessees of State-owned land.]—Lessees of irrigable lands owned by States, political subdivisions, and agencies thereof which are held to be subject to the acreage limitation provisions of Federal reclamation law and for which recordable contracts to sell have not been made may receive project water from the date of approval of this Act subject to the same acreage limitation provisions of Federal reclamation law as private landowners. (84 Stat. 411; Act of October 12, 1982, 96 Stat. 1261, 1272; 43 U.S.C. § 425b)

EXPLANATORY NOTES

1982 Amendment. Section 224(d) of the Reclamation Reform Act of 1982 (Act of October 12, 1982, 96 Stat. 1261, 1272) amended section 3 to read as it appears above. Before it was amended by the 1982 Act, which appears in Volume IV in chronological order, section 3 read as follows:

"Lessees of irrigable lands owned by

States, political subdivisions, and agencies thereof which are held to be subject to the acreage limitation provisions of Federal reclamation law and for which recordable contracts to sell have not been made may receive project water for a period not to exceed twenty-five years from the date of approval of this Act subject to the same acreage limitation provisions of Federal reclamation law as private landowners."

The words "for a period not to exceed twenty-five years" were deleted but, in what may have been an oversight, the words "from the date of approval of this Act" were not deleted as well.

Legislative History. S. 2062, Public Law 91-310 in the 91st Congress. Reported in Senate from Interior and Insular Affairs October 27, 1969; S. Rept. No. 91-499. Passed Senate October 30, 1969. Reported in House from Interior and Insular Affairs March 9, 1970; H.R. Rept. No. 91-885. Passed House, amended, March 16, 1970. Senate asks for a conference April 16, 1970. House agrees to a conference April 23, 1970. Conference report filed June 16, 1970; H.R. Rept. No. 91-1197. House agrees to conference report June 22, 1970. Senate agrees to conference report June 23, 1970.

NOTE OF OPINION

1. Excess land owned by States

Excess lands owned by States and their political subdivisions with respect to which a recordable contract has been executed in the manner specified by Section 2 of the Act of July 7, 1970 (84 Stat. 411) may be leased without regard to acreage limitations. Excess State-owned lands which have not been placed under recordable contracts, as provided in Section 2 of the 1970 Act, if leased, are subject to acreage limitations imposed by Section 3 of that Act. An individual owning land in fee and leasing State-owned land, both located within a single irrigation district, is subject to the 160-acre limit on the delivery of water. Memorandum of Acting Associate Solicitor Davis to Field Solicitor, Ephrata, Washington, October 6, 1970, in re interpretation of P.L. 91-310.

COALINGA CANAL

A joint resolution to change the name of Pleasant Valley Canal, California, to "Coalinga Canal". (Act of July 16, 1970, Public Law 91-336, 84 Stat. 431)

[Designation of Coalinga Canal.]—The name of Pleasant Valley Canal, California, [shall] be changed to "Coalinga Canal". Any law, regulation, document, or record of the United States in which such canal is designated or referred to shall be held to refer to such canal as "Coalinga Canal". (84 Stat. 431)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.J. Res. 224, Public Law 91-336 in the 91st Congress. Reported in House from Rules September 16, 1969; H.R. Rept. No. 91-494. Passed House October 6, 1969. Reported in Senate from Interior and Insular Affairs June 29, 1970; S. Rept. No. 91-988. Passed Senate July 1, 1970.

RELEASE OF CANAL RIGHTS OF WAY, MALIN, OREGON

An act to remove a cloud on the titles of certain property located in Malin, Oregon. (Act of July 22, 1970, Private Law 91-119; 84 Stat. 2114)

[Release of reserved interests.]—The United States hereby releases and quitclaims to the owners of record of the lots hereinafter named those interests reserved pursuant to the Act of August 30, 1890 (26 Stat. 371, 391), relating to the right of the United States to construct ditches and canals upon and through Lots 1, 2, 3, 8, 9, and 10 in Block 29, and Lots 1, 2, 3, 4, 5, and 6 in Block 30 in Malin, Oregon, all as shown on that certain supplemental plat of Malin (Klamath County) Oregon, filed July 5, 1939. (84 Stat. 2114)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of August 30, 1890, referred to in the text, provides that patents for lands west of the one hundredth meridian shall reserve rights of way for Government canals and ditches. An extract from the Act appears in Volume I at page 17.

Legislative History. H.R. 2036, Private Law 91-119 in the 91st Congress. Reported in House from Interior and Insular Affairs January 19, 1970; H.R. Rept. No. 91-788. Passed House February 16, 1970. Reported in Senate from Interior and Insular Affairs July 6, 1970; S. Rept. No. 91-1000. Passed Senate July 8, 1970.

NARROWS UNIT, MISSOURI RIVER BASIN PROJECT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the Narrows unit Missouri River Basin project, Colorado, and for other purposes. (Act of August 28, 1970, Public Law 91-389, 84 Stat. 830)

[Sec. 1. Narrows Unit, Missouri River Basin project, authorized.]—The Narrows unit, heretofore authorized as an integral part of the Missouri River Basin project by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented, is hereby reauthorized as a unit of that project for the purposes of providing irrigation water for one hundred and sixty-six thousand acres of land, flood control, fish and wildlife conservation and development, public outdoor recreation, potential future municipal and industrial supplies, and for other purposes. The construction, operation, and maintenance of the Narrows unit shall be subject to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal features of the Narrows unit shall include the Narrows Dam and Reservoir, fish hatchery and rearing ponds, acquisition and development of the existing Jackson Lake Reservoir, including some rehabilitation of Jackson Lake Dam, for public outdoor recreation and fish and wildlife enhancement, and other necessary works and facilities to effect its purpose.

The Narrows unit shall be operated in such manner that identifiable return flows of water will not cause the South Platte River to be in violation of water quality standards established by the State of Colorado and approved by the Secretary of the Interior pursuant to the Water Quality Act of 1965 (79 Stat. 903). (84 Stat. 830).

EXPLANATORY NOTE

References in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), referred to in the text, appears in Volume II at page 806. The Water Quality Act of 1965 (79 Stat. 903), also referred to in the text, amended in part the Federal Water Pollution Control Act of July 9, 1956. The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 89 Stat. 816) and subsequent amendatory legislation, and, as amended is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

Sec. 2. [Fish and wildlife conservation and development—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Narrows unit shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213). (84 Stat. 831)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 3. [Integration with other Federal works—Repayment contracts.]—The Narrows unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented: *Provided*, That repayment contracts for the return of construction costs allocated to irrigation will be based on the irrigator's ability to repay, as determined by the Secretary: *Provided further*, That the terms of such contracts shall not exceed 50 years. (84 Stat. 831)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 88 891), referred to in the text, authorized the comprehensive development of the Missouri River Basin. Section 9 of the Act appears in Volume II at page 806.

Sec. 4. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the unit authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (84 Stat. 831)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 5. [Excess land laws waived in certain instances.]—To the extent that project water constitutes a supplemental irrigation supply, the provisions of the Act of June 16, 1938, relating to the Colorado-Big Thompson project in Colorado are hereby made equally applicable to the Narrows unit. (84 Stat. 831)

EXPLANATORY NOTE

Reference in the Text. The Act of June 16, 1938 (52 Stat. 764), referred to in the text, reads: "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." The 1938 Act appears in Volume I at page 612.

Sec. 6. [Interest rate.]—The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal

year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (84 Stat. 831)

Sec. 7. [Appropriation authorization.]—There is hereby authorized to be appropriated for construction of the Narrows unit as authorized in this Act the sum of $68,050,000 (based upon January 1969 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit. (84 Stat. 831)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3547, Public Law 91-389 in the 91st Congress. Reported in Senate from Interior and Insular Affairs June 29, 1970; S. Rept. No. 91-991. Passed Senate July 23, 1970. Passed House, amended, August 3, 1970. Senate asks for a conference August 6, 1970. House agrees to a conference August 10, 1970. Conference report filed August 12, 1970; H.R. Rept. No. 91-1415. House agrees to conference report August 13, 1970. Senate agrees to conference report August 14, 1970. Companion bill H.R. 6715 reported in House from Interior and Insular Affairs June 1, 1970; H.R. Rept. No. 91-1132.

SUPPLEMENTAL IRRIGATION FACILITIES, YUMA MESA DIVISION

An act to amend Public Law 394, Eighty-fourth Congress, to authorize the construction of supplemental irrigation facilities for the Yuma Mesa Irrigation District, Arizona. (Act of September 25, 1970, Public Law 91-408, 84 Stat. 860)

[Sec. 1. Secretary authorized to construct irrigation works.]—Section 2 of the Act of January 28, 1956 (70 Stat. 5, Public Law 394, Eighty-fourth Congress), is amended by inserting after the word "buildings" the words "and irrigation works and facilities".

Sec. 2. [Return flows shall comply with water quality standards.]—Section 4 of the Act of January 28, 1956, is amended by changing the period at the end thereof to a comma and adding "but the contract executed on or prior to such date may be amended to include works authorized after such date by amendments to section 2." The Yuma-Mesa division shall be operated in such manner that identifiable return flows of water will not cause the Colorado River stream system to be in violation of water quality standards promulgated pursuant to the Water Quality Act of 1965 (79 Stat. 903). (84 Stat. 860)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

References in the Text. The Water Quality Act of 1965, referred to in the text, amended in part the Federal Water Pollution Control Act of July 9, 1956. The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983. The Act of January 28, 1956 (70 Stat. 5), also referred to in the text, authorized the Secretary of the Interior to execute a repayment contract with the Yuma Mesa Irrigation District, Gila Project, Arizona, and to construct additional drainage facilities and works for the District. The 1956 Act appears in Volume II at page 1239.

Editor's Note, Annotations. An annotation of an opinion is found in Supplement I under "January 28, 1956—Repayment Contract, Yuma Mesa District."

Legislative History. S. 2882, Public Law 91-408 in the 91st Congress. Reported in Senate from Interior and Insular Affairs March 16, 1970; S. Rept. No. 91-740. Passed Senate March 18, 1970. Passed House, amended, September 10, 1970. Senate agrees to House amendments September 14, 1970. Companion bill H.R. 9804 reported in House from Interior and Insular Affairs July 27, 1970; H.R. Rept. No. 91-1332.

RIVERTON UNIT, MISSOURI RIVER BASIN PROJECT (RIVERTON EXTENSION UNIT REAUTHORIZED)

An act to reauthorize the Riverton extension unit, Missouri River Basin project, to include therein the entire Riverton Federal reclamation project, and for other purposes. (Act of September 25, 1970, Public Law 91-409, 84 Stat. 861)

[Sec. 1. Riverton Unit, Missouri River Basin project, reauthorized.]—The general plan for the Riverton extension unit, Missouri River Basin project, heretofore authorized under section 9 of the Flood Control Act of 1944 (58 Stat. 887), is modified to include relief to water users, construction, betterment of works, land rehabilitation, water conservation, fish and wildlife conservation and development, flood control, and silt control on the entire Riverton Federal reclamation project. As so modified the general plan is reauthorized under the designation "Riverton unit of the Missouri River Basin project". The Riverton extension unit shall be operated in such manner that identifiable return flows of water will not cause the Wind River to be in violation of water quality standards promulgated pursuant to the Water Quality Act of 1965 (79 Stat. 903). (84 Stat. 861)

EXPLANATORY NOTE

References in the Text. Section 9 of the Flood Control Act of December 22, 1944, referred to in the text, appears in Volume II at page 806. The Water Quality Act of 1965, also referred to in the text, amended in part the Federal Water Pollution Control Act of July 9, 1956. The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

Sec. 2. [Repayment contracts.]—(a) The Secretary of the Interior is authorized to negotiate and execute an amendatory repayment contract with the Midvale Irrigation District covering all lands of the Riverton unit. This contract shall replace all existing repayment contracts between the Midvale Irrigation District and the United States.

(b) The period for repayment of the construction and rehabilitation and betterment costs allocated to irrigation and assigned to be repaid by the irrigation water users shall be fifty years from and including the year in which such amendatory repayment contract is executed.

(c) During the period required to construct and test the adequacy of drains and other water conservation works, the rates of charge to land classes and the acreage assessable in each land class in the unit shall continue to be as established in the amendatory repayment contract with the district dated June 26, 1952; thereafter such rates of charge and assessable acreage shall be in accordance with the amortization capacity and classification of unit lands as determined by the Secretary. (84 Stat. 861)

Sec. 3. [Construction and rehabilitation and betterment costs.]—(a) Construction and rehabilitation and betterment costs of the Riverton unit which the Secretary determines to be assignable to lands classified now or hereafter as permanently unproductive shall be nonreturnable and nonreimbursable: *Provided*, That whenever new lands or lands now or hereafter classified as nonproductive, are classified or reclassified as productive, the repayment obligation of the district shall be increased appropriately.

(b) All miscellaneous net revenues of the Riverton unit shall accrue to the United States and shall be applied against irrigation costs not assigned to be repaid by irrigation water users.

(c) Construction and rehabilitation and betterment costs of the Riverton unit allocated to irrigation and not assigned to be repaid by irrigation water users nor returned from miscellaneous net revenues of the unit shall be returnable from net revenues of the Missouri River Basin project within fifty years from and including the year in which the amendatory contract authorized by this Act is executed. (84 Stat. 861)

Sec. 4. [Acreage limitation.]—The limitation of lands held in beneficial ownership within the unit by any one owner, which are eligible to receive project water from, through, or by means of project works, shall be one hundred and sixty acres of class 1 land or the equivalent thereof in other land classes, as determined by the Secretary. (84 Stat. 861)

Sec. 5. [Disposal of lands.]—(a) Lands available for disposition on the Riverton unit, including property acquired pursuant to the Act of March 10, 1964, shall be sold at public or private sale at not less than appraised fair market value at the time of sale. The Secretary may dispose of such lands in tracts of any size, so long as no such disposition will result in a total ownership within the unit by any one owner in excess of the limitation prescribed in section 4 above.

(b)In the disposition of lands on the Riverton unit, resident landowners on the unit who have not obtained relief under the Act of March 10, 1964, as amended, shall have a prior right to purchase tracts in order to supplement their existing farms. (84 Stat. 862)

EXPLANATORY NOTE

Reference in the Text. The Act of March 10, 1964 (Public Law 88-278, 78 Stat. 156), referred to in the text, among other things, authorizes the Secretary of the Interior to purchase lands within the third division of the Riverton project. The 1964 Act appears in Volume III at page 1740.

Sec. 6. (a) [Fish and wildlife benefits.]—The provision of lands, facilities, and project modifications which furnish fish and wildlife benefits in connection with the Riverton extension unit shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213).

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

(b) [Interest rate.]—The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital cost allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of said interest-bearing features is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (84 Stat. 862)

Sec. 7. [Appropriations for Bureau of Reclamation—Rules and regulations.]—Appropriations heretofore or hereafter made for carrying on the functions of the Bureau of Reclamation shall be available for credits, expenses, charges, and cost provided by or incurred under this Act. The Secretary is authorized to make such rules and regulations as are necessary to carry out the provisions of this Act. (84 Stat. 862)

Sec. 8. [Appropriation authorization.]—There is hereby authorized to be appropriated for rehabilitation and betterment of the facilities of the first and second divisions of the Riverton unit, for completion of drainage works for said first and second divisions, and for fish and wildlife measures as authorized by this Act, the sum of $12,116,000 (based on July 1969 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction cost indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the Riverton unit. (84 Stat. 862)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 434, Public Law 91-409 in the 91st Congress. Reported in Senate from Interior and Insular Affairs April 23, 1970; S. Rept. No. 91-789. Passed Senate April 27, 1970. Passed House, amended, September 10, 1970. Senate agrees to House amendment September 14, 1970. Companion bill H.R. 7521 reported in House from Interior and Insular Affairs July 27, 1970; H.R. Rept. No. 91-1331.

MINOT EXTENSION, GARRISON DIVERSION UNIT

An act to authorize the Secretary of the Interior to construct, operate, and maintain the Minot extension of the Garrison diversion unit of the Missouri River Basin project in North Dakota, and for other purposes. (Act of September 25, 1970, Public Law 91-415, 84 Stat. 866)

[Sec. 1. Minot extension authorized.]—The Secretary of the Interior is authorized to construct, operate, and maintain the Minot extension of the Garrison diversion unit in North Dakota under the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) for the principal purposes of conveying, regulating, and furnishing water made available through facilities of the Garrison diversion unit for use by the city of Minot and other communities for municipal and industrial purposes; conserving and developing fish and wildlife resources; and enhancing outdoor recreation opportunities. The Minot extension to the Garrison diversion unit shall be operated in such manner that identifiable return flows of water will not cause the Souris River to be in violation of water quality standards promulgated pursuant to the Water Quality Act of 1965 (79 Stat. 903). (84 Stat. 866)

EXPLANATORY NOTE

Reference in the Text. The Water Quality Act of 1965, referred to in the text, amended in part the Federal Water Pollution Control Act of July 9, 1956 (70 Stat. 498). The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S Code as of January 14, 1983.

Sec. 2. [Interim delivery of groundwater.]—The Secretary is authorized to construct appropriate portions of the Minot extension to assist in the interim delivery of water from ground water sources prior to the availability of water through the facilities of the Garrison diversion unit. (84 Stat. 866)

Sec. 3. (a) [Costs allocated to municipal water supply to be repaid with interest.]—Costs of the project, or any unit or stage thereof, allocated to municipal water supply, shall be repayable, with interest, by the municipal water users over a period of not more than fifty years from the date that water is first delivered for that purpose, pursuant to contracts with municipal corporations or other organizations, as defined in subsection 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187). Such contracts shall be executed before the commencement of construction of the project. Contracts may be entered into with water users' organizations pursuant to the provisions of this Act without regard to the last sentence of subsection 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1187).

(b) [Soil survey and land classification requirements waived.]—Expenditures for the Minot extension may be made without regard to the soil

survey and land classification requirements of the Interior Department Appropriation Act of 1954 (67 Stat. 266).

(c) [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Minot extension shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction on the extension is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue.

(d) [Transfer of works to qualified contracting entity—Credit of O&M costs—Establishment of criteria.]—The Secretary is authorized to transfer to a qualified contracting entity or entities the care, operation, and maintenance of the project works, and, if such transfer is made, to credit annually against the contractor's repayment obligation that portion of the year's joint operation and maintenance costs which, if the United States had continued to operate the project, would have been allocated to fish and wildlife and recreation purposes. Prior to assuming care, operation, and maintenance of the project works the contracting entity or entities shall be obligated to operate them in accordance with criteria established by the Secretary of the Interior with respect to fish and wildlife and recreation. (84 Stat. 866)

EXPLANATORY NOTES

References in the Text. Subsection 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in section 3(a) of the text, defines "organizations" as "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." The Act appears in Volume I at page 635. The last sentence of subsection (c) of section 9 of the Reclamation Project Act of 1939 also referred to in section 3(a) of the text, reads: "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." The sentence appears in Volume I at page 648.

Reference in the Text. The soil survey and land classification requirements of the Interior Department Appropriation Act of 1954 (67 Stat. 266), referred to in section 3(b) of the text, provide that no appropriation shall be available for the construction of any project or any feature of a project until the Secretary certifies that an adequate soil survey and land classification has been made. Extracts from the 1954 Act appear in Volume II at page 1115.

Sec. 4. [Fish and wildlife conservation and development—Recreation enhancement.]—The conservation and development of fish and wildlife resources and the enhancement of recreation opportunities in connection with the Minot extension shall be in accordance with the provisions of the Federal Water Projects Recreation Act (79 Stat. 213). (84 Stat. 867)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 5. [Appropriation authorization.]—There is authorized to be appropriated for the construction of the Minot extension the sum of $12,900,000 (January 1969 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved. There are also authorized to be appropriated such additional sums as may be required for the operation and maintenance of the extension. (84 Stat. 867)

EXPLANATORY NOTES

Not codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2808, Public Law 91-415 in the 91st Congress. Reported in Senate from Interior and Insular Affairs July 8, 1970; S. Rept. No. 91-1005. Passed Senate July 10, 1970. Passed House, amended, September 10, 1970. Senate agrees to House amendments September 14, 1970. Companion bill H.R. 16987 reported in House from Interior and Insular Affairs July 29, 1970; H.R. Rept. No. 91-1346.

AMEND NAVAJO INDIAN IRRIGATION PROJECT ACT

An act to amend the Act of June 13, 1962 (76 Stat. 96), with respect to the Navajo Indian irrigation project. (Act of September 25, 1970, Public Law 91-416, 84 Stat. 867)

[Sec. 1. Navajo Indian Irrigation Project Act amended.]—The Act of June 13, 1962 (76 Stat. 96), is amended as follows:

(a) By deleting "and" in the first sentence of section 3(a) immediately preceding "townships 27" and by inserting immediately preceding "New Mexico principal meridian", the following: "townships 26 and 27 north, range 11 west, and townships 24, 25, and 26 north, ranges 12 and 13 west,";

(b) By deleting "$135,000,000 (June 1961 prices)" in the first sentence of section 7 and substituting in lieu thereof "$206,000,000 (April 1970 prices)"; and

(c) By adding the following subsection to section 3:

"(d) Each permit that is in effect on lands declared to be held in trust for the Navajo Tribe pursuant to section 3(a) of this Act shall continue in effect for the term thereof unless the land is needed for irrigation purposes, subject to regulations applicable to permits of Indian lands, and upon its expiration it shall only be renewed on an annual basis until the land is required for irrigation purposes. When, in the judgment of the Secretary of the Interior, such land is required for irrigation purposes, the Secretary shall notify the permittee and the permit shall be deemed to be canceled, with no right of appeal. The permittee shall be compensated by the Navajo Tribe for the reasonable value of any range improvements of a permanent nature placed on the lands under authority of a permit or agreement with the United States, as determined by the Secretary of the Interior. Amounts paid to the United States by the Navajo Tribe out of tribal funds for the full appraised value of lands declared to be held in trust for the Navajo Tribe pursuant to section 3(a) of this Act shall be reduced by the amount of compensation paid by the Navajo Tribe to permittees pursuant to this subsection." (84 Stat. 867)

Sec. 2. [Water quality standards.]—The Navajo Indian irrigation project shall be operated in such manner that identifiable flows of water will not cause the project to be in violation of water quality standards promulgated pursuant to the Water Quality Act of 1965 (79 Stat. 903). (84 Stat. 867)

Explanatory Notes

Reference in the Text. The Water Quality Act of 1965, referred to in the text, amended in part the Federal Water Pollution Control Act of July 9, 1956 (70 Stat. 498). The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they

appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

Editor's Note, Annotations of Opinions. Annotations of opinions are found in Volume III at pages 1658-1659 and 1662 and in Supplement I under "June 13, 1962—Navajo Indian Irrigation Project and San Juan-Chama Project, Initial Stage."

Legislative History. S. 203, Public Law 91-416 in the 91st Congress. Reported in Senate from Interior and Insular Affairs August 7, 1969; S. Rept. No. 91-363. Passed Senate August 12, 1969. Passed House, amended, September 10, 1970. Senate agrees to House amendments September 14, 1970. Companion bill H.R. 13001 reported in House from Interior and Insular Affairs July 27, 1970; H.R. Rept. No. 91-1333.

STUDY OF LAKE TAHOE NATIONAL LAKESHORE

An act to authorize the Secretary of the Interior to study the feasibility and desirability of a national lakeshore on Lake Tahoe in the States of Nevada and California, and for other purposes. (Act of September 26, 1970, Public Law 91-425, 84 Stat. 882)

[Sec. 1. Purpose—Study authorized—Cooperation of Federal agencies with the Secretary of the Interior.]—In order to consider preserving appropriate segments of the lakeshore of Lake Tahoe and adjoining lands and waters in their natural condition for public outdoor recreation, the Secretary of the Interior (hereafter referred to as the "Secretary") shall study, investigate, and formulate recommendations on the feasibility and desirability of establishing such areas as a national lakeshore. The Secretary shall consult with the Secretary of Agriculture; the Chief of Engineers, Department of the Army; and any other interested Federal agencies, as well as the Tahoe Regional Planning Agency and other State and local bodies and officials involved; and shall coordinate the study with applicable outdoor recreation plans, pollution control plans, highway plans, and other planning activities relating to the Lake Tahoe Basin. Federal departments and agencies are authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to furnish such statistics, data, reports, and other material as the Secretary may deem necessary for purposes of the study. (84 Stat. 882)

Sec. 2. [Report required.]—The Secretary shall submit to the President and the Congress of the United States, within one year after the date of this Act, a report of his findings and recommendations. The report of the Secretary shall contain, but not be limited to, findings with respect to—

(a) the scenic, scientific, historic, outdoor recreation, and natural values of the water, lakeshore, and related upland resources involved, including their use for driving for pleasure, walking, hiking, riding, bicycling, boating, swimming, picnicking, camping, forest management, fish and wildlife management, scenic and historic site preservation, hunting, fishing, and winter sports;

(b) the potential alternative beneficial uses of the water, lakeshore, and related upland resources involved, taking into consideration appropriate uses of the land for residential, commercial, industrial, agricultural, and transportation purposes, and for public services;

(c) the type of Federal, State, and local programs that are feasible and desirable in the public interest to preserve, develop, and make accessible for public use the values identified;

(d) the relationship of any recommended national lakeshore to existing or proposed Federal, State, and local programs to manage in the public interest the natural resources of the entire Lake Tahoe Basin; and

(e) alternative means of restoring and preserving the values inherent in the area under present ownership patterns. (84 Stat. 882)

Sec. 3. [Federal agencies to provide maximum recreational opportunities in Lake Tahoe area.]—Pending submission of the report of the Secretary to the Congress, the heads of Federal agencies having administrative jurisdiction over the Federal lands within the area referred to in section 1 of this Act shall, consistent with the purposes for which the lands were acquired or set aside by the United States and to the extent authorized by law, encourage and provide maximum opportunities for the types of recreation use of such lands referred to in section 2(a) of this Act. (84 Stat. 882)

Sec. 4. [Appropriation authorization.]—There are authorized to be appropriated not more than $50,000 to carry out the provisions of this Act. (84 Stat. 882)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2208, Public Law 91-425 in the 91st Congress. Reported in Senate from Interior and Insular Affairs May 11, 1970; S. Rept. No. 91-855. Passed Senate May 13, 1970. Reported in House from Interior and Insular Affairs August 10, 1970; H.R. Rept. No. 91-1403. Passed House, amended, September 14, 1970. Senate agrees to House amendments September 16, 1970.

PUBLIC WORKS FOR WATER, POLLUTION CONTROL, AND POWER DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1971

[Extracts from] An act making appropriations for public works for water, pollution control, and power development, including the Corps of Engineers—Civil, the Panama Canal, the Federal Water Quality Administration, the Bureau of Reclamation, power agencies of the Department of the Interior, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1971, and for other purposes. (Act of October 7, 1970, Public Law 91-439, 84 Stat. 890)

* * * * *

TITLE II—DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

* * * * *

CONSTRUCTION, GENERAL

* * * * *

[Elk Creek Reservoir Project—Recovery of irrigation costs.]—*Provided further*, That the Elk Creek Reservoir Project in Oregon shall not be operated for irrigation purposes until such time as the Secretary of the Interior makes the necessary arrangements with non-Federal interests to recover the costs, in accordance with Federal Reclamation Law, which are allocated to the irrigation purpose: (84 Stat. 892)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

* * * * *

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Rehabilitation programs.]—*Provided further*, That of the amount herein appropriated not to exceed $5,000 for the Westland Irrigation District,

Oregon, $5,000 for the Tumalo Irrigation District, Oregon, and $5,000 for the Cascade Irrigation District, Ellenberg, Washington, shall be available to initiate a rehabilitation and betterment program under the Act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior: (84 Stat. 896)

EXPLANATORY NOTE

Reference in the Text. The Act of October 7, 1949, referred to in the text, is the Rehabilitation and Betterment Act. It appears in Volume II at page 969.

[Steamboat Bertrand.]—*Provided further*, That of the amount herein appropriated not to exceed $140,000 may be used for archeological salvage of the cargo of the steamboat Bertrand in the Missouri River Basin. (84 Stat. 896)

* * * * *

BONNEVILLE POWER ADMINISTRATION

CONSTRUCTION

* * * * *

[Hydrothermal power program.]—*Provided*, That not more than $150,000 of the funds appropriated herein shall be available for preliminary engineering required by the Bonneville Power Administration in connection with the proposed agreements relating to three non-federally financed generating plants proposed under the hydrothermal program to be sponsored jointly or severally by the Washington Public Power Supply System, Seattle City Light, Tacoma City Light, Snohomish County PUD and the Puget Sound Power and Light Company, pursuant to which the Bonneville Power Administration will acquire from preference customers and pay by net billing for generating capability from non-federally financed thermal generating plants in the manner described in the committee report. (84 Stat. 899)

EXPLANATORY NOTE

Committee Report. The report of the House Committee on Appropriations provided in relevant part: "Last year the Administration approved a 10-year hydrothermal power program for the Pacific Northwest, and the Congress approved initiating its implementation through proposed agreements between Bonneville Power Administration, Portland General Electric Co., and the Eugene Water & Electric Board.

"The program includes the construction of seven thermal generating plants between 1971 and 1981. None will be federally constructed, financed or owned. The committee approves implementation of the remainder of the program by the use of net billing as the means of affecting payment by the Bonneville Power Administration for part or all of the generating capacity of nonfederally financed thermal plants, under suitable agreements between Bonneville Power Administration and preference customers to accomplish this purpose. Such agreements would provide that the Bonneville Power Administration will acquire from a date certain, on a cost basis, the preference customers' right to the generating ca-

pability of nonfederally financed plants whether or not they are operable. Any costs or losses to the Bonneville Power Administration under these agreements will be borne by Bonneville Power Administration rate payers through rate adjustments if necessary. The Committee requests that the proposed agreements be submitted to the House and Senate Appropriations Committees at least 60 days prior to their execution by the Administrator." H.R. Rept. No. 91-1219, 91st Cong., 2d Sess. 90 (1970).

There is a similar statement in the Senate committee report. S. Rept. No. 91-1118, 91st Cong., 2d Sess. 56 (1970).

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971". (84 Stat. 904)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 18127, Public Law 91-439 in the 91st Congress. H.R. Rept. No. 91-1219. S. Rept. No. 91-1118. H.R. Rept. No. 91-1456 (conference report).

INTEGRATION OF BLACK BUTTE PROJECT WITH CENTRAL VALLEY PROJECT

An act to amend the Central Valley reclamation project to include Black Butte project. (Act of October 23, 1970, Public Law 91-502, 84 Stat. 1097)

[Central Valley project to include Black Butte project.]—The Central Valley project, California, authorized by section 2 of the Act of Congress of August 26, 1937 (50 Stat. 850), is hereby amended to include the Black Butte project on Stony Creek, which was authorized for construction by the Corps of Engineers by the Flood Control Act approved December 22, 1944 (58 Stat. 887). Subject to the provisions of this Act, the Black Butte project shall be financially integrated with the Central Valley project and coordinated operationally with the other storage units of the Central Valley project by the Bureau of Reclamation under the Secretary of the Interior: *Provided*, That the Black Butte Dam and Reservoir will be physically operated and maintained by the Corps of Engineers and in a manner compatible with recreational use of the reservoir. (84 Stat. 1097)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

References in the Text. Section 2 of the Act of August 26, 1937 (50 Stat. 850), referred to in the text, appears in Volume I at page 583. Extracts from the Flood Control Act of December 22, 1944 (58 Stat. 887), also referred to in the text, appear in Volume II at page 796.

Legislative History. H.R. 18298, Public Law 91-502 in the 91st Congress. Reported in House from Interior and Insular Affairs August 13, 1970; H.R. Rept. No. 91-1426. Passed House September 14, 1970. Reported in Senate from Interior and Insular Affairs October 13, 1970; S. Rept. No. 91-1338. Passed Senate October 14, 1970.

DEFENSES AGAINST LAND CLAIMS BY UNITED STATES IN RIVERSIDE COUNTY

An act to render the assertion of land claims by the United States based upon accretion or avulsion subject to legal and equitable defenses to which private persons asserting such claims would be subject. (Act of October 23, 1970, Public Law 91-505, 84 Stat. 1106)

[Sec. 1. United States subject to legal and equitable defenses—Limitations.]—The United States shall be subject to all legal and equitable defenses which are available against a private party litigant under the laws of the State in which the subject real property is located on the date of enactment of this Act in any case wherein the United States seeks to establish title to land or seeks to obtain relief dependent on ownership of such lands and (1) such title or ownership is claimed on the basis of accretion or avulsion, (2) the lands to which the United States seeks title or ownership are not necessary to provide riparian frontage to other contiguous lands owned by the United States, (3) the facts upon which the United States bases its claim of accretion or avulsion occurred more than forty years prior to the effective date of this Act, (4) the defendant has paid real property taxes on the disputed lands on the same basis as other owners of fee lands within the same taxing jurisdiction, (5) defendants claim title to the disputed lands or lands to which the disputed lands are claimed to have accreted by chains of title deriving from a conveyance from the State or Federal Government or a political agency or subdivision thereof, and (6) a reasonably prudent man would have believed that, when he acquired title to the real property in question, he had obtained title free of the likelihood of any claim by the United States Government, any State, or any private person, but in no event shall the provisions of this Act apply to any land other than that land situated in Riverside County, California, within three miles of any portion of the Colorado River between river points 13.00 and 13.19, as defined in the interstate compact defining the boundary between the States of Arizona and California (80 Stat. 340). (84 Stat. 1106; Act of November 3, 1978, Pub. L. 95-587, 92 Stat. 2496)

EXPLANATORY NOTES

1978 Amendment. The Act of November 3, 1978 (Public Law 95-587, 92 Stat. 2496) amended section 1 by striking out "13.17" and inserting in lieu thereof "13.19". The 1978 Act does not appear herein.

Reference in the Text. The Arizona-California Boundary Compact (80 Stat. 340), referred to in the text, appears in Volume III at page 1875.

Sec. 2. [Determination of date of acquisition of title.]—For purposes of determining the date of acquisition of title to the real property in question by a private party litigant, his date of acquisition of title shall be deemed that of the earliest date when he first acquired title to the real property

and for purposes of determining said acquisition and ownership of stock or real property under this Act—

(A) ownership by any person related by blood or marriage to another shall be deemed ownership by the other;

(B) ownership by an estate or trustee shall be deemed ownership by the decedent or grantor of the trust, respectively;

(C) ownership by a corporation shall be deemed ownership by its transferor or transferors: *Provided,* That (1) at least 50 per centum of the stock of the corporation was owned by all transferors immediately after the transfer or (2) the corporation acquired the real property in question pursuant to a transaction where said real property was transferred solely in exchange for stock in such corporation and immediately after the transfer all corporations and persons transferring any property to the transferee corporation owned at least 80 per centum of the shares of the transferee corporation;

(D) ownership by a corporation shall be deemed ownership as tenants in common by each of its shareholders who own at least 10 per centum of the outstanding stock of the corporation; and

(E) property or stock acquired or held by tenants in common, joint tenants or persons associated together in business shall be deemed to be and have been entirely owned by either party so long as owned by any or all of them. (84 Stat. 1107)

Sec. 3. [Application of attribution rules.]—The application of the attribution rules once shall not preclude any number of subsequent applications of the attribution rules set forth in section 2 of this Act. (84 Stat. 1107)

Sec. 4. [Application of Act—Court action.]—The provisions of this Act shall apply in any case with respect to which an action has been brought by the United States before the date of the enactment of this Act, only if such action has not been concluded by a final determination by the trial court or by such appellate courts as may review the action of the trial court in those actions wherein review by such courts is or has been timely sought. (84 Stat. 1107)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 15405, Public Law 91-505 in the 91st Congress. Reported in House from Interior and Insular Affairs September 22, 1970; H.R. Rept. No. 91-1459. Passed House October 5, 1970. Reported in Senate from Interior and Insular Affairs October 8, 1970; S. Rept. No. 91-1290. Passed Senate October 12, 1970.

RELIEF OF BEASLEY ENGINEERING COMPANY, INC.

An act for the relief of the Beasley Engineering Company, Incorporated. (Act of December 17, 1970, Private Law 91-205, 84 Stat. 2157)

[Payment in satisfaction of claim—Agent or attorney's fee limited.]—The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Beasley Engineering Company, Incorporated, of Emeryville, California, the sum of $11,873.27 in full satisfaction of its claims against the United States for losses sustained as the result of damage or destruction of portions of the Dalles irrigation works being constructed under Bureau of Reclamation contract numbered 14–06–D–4014, specifications numbered DC–6004, as a result of floods and high waters during December 1964 and January 1965, which destroyed or damaged work already in place and necessitated reconstruction and repair of installations covered by said contract: *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. (84 Stat. 2157)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 2876, Private Law 91-205 in the 91st Congress. Reported in House from Judiciary March 12, 1969; H.R. Rept. No. 91-61. Passed House April 1, 1969. Reported in Senate from Judiciary December 3, 1970; S. Rept. No. 91-1395. Passed Senate December 7, 1970.

SOBOBA INDIAN RESERVATION, CALIFORNIA—RELEASE OF CLAIM, ANNEXATION AND WATER SERVICE AGREEMENTS

An Act to authorize the Secretary of the Interior to approve an agreement entered into by the Soboba Band of Mission Indians releasing a claim against the Metropolitan Water District of Southern California and Eastern Municipal Water District, California, and to provide for construction of a water distribution system and a water supply for the Soboba Indian Reservation; and to authorize long-term leases of land on the reservation. (Act of December 17, 1970, Public Law 91-557, 84 Stat. 1465)

[Sec. 1. Secretary authorized to approve release agreement between Soboba Indians, Metropolitan Water District, and Eastern Municipal Water District—Payment for the benefit of the Indians—Effective date.]—The Secretary of the Interior is authorized to approve a release agreement to be negotiated by and between the Soboba Band of Mission Indians, the Metropolitan Water District of Southern California, hereinafter called Metropolitan, and the Eastern Municipal Water District, hereinafter called Eastern, which provides among other things that—

(a) Metropolitan shall pay to the Secretary of the Interior for the use and benefit of the Soboba Indians the sum of $30,000. Payment shall be made when the lands that comprise the Soboba Indian Reservation have been annexed to Metropolitan and to Eastern. The annexation shall be subject to the terms and conditions of the release agreement and the annexation and water service agreement to be executed pursuant to section 2 of this Act.

(b) The Soboba Band of Mission Indians releases Metropolitan and Eastern, their successors or assigns, from all claim it may have based on past, present, or future actual or claimed damage to, or interference with, the flow of water from the springs on the Soboba Indian Reservation lands, or on actual or claimed interference with, or damage to, the water supply to or upon the lands of the Soboba Indian Reservation, which claims arise from construction and operation of a certain tunnel through the San Jacinto mountains constructed in the 1930's.

(c) The release agreement shall be effective upon the completion of the concurrent annexation of the Soboba Indian Reservation lands to Metropolitan and Eastern and upon the execution of an annexation and water service agreement authorized by section 2 of this Act. (84 Stat. 1465)

Sec. 2. [Secretary and Indians authorized to enter into annexation and water service agreement—Terms of agreement.]—The Secretary of the Interior and the Soboba Band of Indians are authorized to enter into an annexation and water service agreement with Eastern which provides, among other things, that—

(a) [Reservation lands may be annexed to Districts.]—The Soboba Indian Reservation lands may be annexed to Eastern and Metropolitan.

(b) [No annexation charge or tax.]—No annexation charge or back taxes regardless of form shall be made for said annexation.

(c) [Determination of facilities to be constructed and rehabilitated—Cost-sharing—Ownership of facilities.]—The Secretary and Eastern shall jointly determine the additional new water supply and distribution facilities that shall be constructed and the existing facilities that shall be rehabilitated in order to provide domestic and irrigation water to each consumer within the Soboba Indian Reservation. Subject to the appropriation authorization limitation in section 5, construction or rehabilitation of facilities to provide water service to the Soboba Indian Reservation shall be undertaken by Eastern, shall be financed by the United States, with Eastern providing such funds as the Secretary of the Interior and Eastern jointly determine represent a prorated share of joint-use facilities constructed outside of the Soboba Reservation, and with the $30,000 paid pursuant to subsection 1(a) being applied to the construction or rehabilitation. Facilities constructed within the Soboba Reservation shall be the property of the United States and facilities constructed outside of the Soboba Reservation shall be the property of Eastern.

(d) [Eastern Municipal W.D. to have exclusive right to use of on-Reservation facilities owned by U.S.]—Eastern shall have the exclusive right, without charge, to use the supply and distribution facilities owned by the United States lying within the Soboba Indian Reservation, and Eastern shall assume the responsibility for maintaining and operating such facilities.

(e) [New service on-Reservation to be financed by applicants therefor—Exception where lands held in trust by U.S.—Ownership of new service facilities.]—Upon assumption of operation and maintenance of the system by Eastern following completion of the initial installation and rehabilitation work, any new service connections applied for by residents or consumers within the Soboba Indian Reservation, and any other additional water main extensions or facilities required for serving new development within the Soboba Indian Reservation, shall be financed by the applicants for such service, in accordance with the standard rules and regulations of Eastern, except as indicated in the next sentence. As long as title to the lands involved is held in trust by the United States, such new service connections or additional water main extensions or facilities may be financed by the United States to the extent agreed upon by the Secretary of the Interior. All such new service connections, additional extensions, or facilities shall be constructed by Eastern. All such new service connections, additional extensions, or facilities financed by parties other than the United States shall be the property of Eastern. All such service connections, additional extensions, or facilities financed by the United States shall be the property of the United States subject to exclusive use by Eastern without charge.

(f) [Delivery of water on-Reservation.]—Subject to the limitations of capacity and location of the jointly agreed upon facilities, Eastern shall deliver domestic and irrigation water to each individual consumer within the Soboba Indian Reservation in accordance with the prevailing standard

rules and regulations of Eastern and the provisions of the annexation and water service agreement.

(g) [Determination of water service rates—Delinquent bills.]—The retail rates applicable to water service within the Soboba Indian Reservation shall be mutually agreed upon by Eastern and the Secretary of the Interior, and shall be neither less than nor more than the estimated cost of such water service to Eastern, adjusted to reflect differences between estimated costs and actual costs in preceding rate periods. Eastern shall make collections for service in accordance with its prevailing rules and regulations and the Secretary of the Interior shall guarantee payment to Eastern of any delinquent bill for providing water service to lands held in trust within the Soboba Indian Reservation. Water service to a consumer shall be discontinued in accordance with the prevailing rules and regulations of Eastern when a bill for service becomes delinquent, and shall not be resumed as long as the bill is delinquent without prior approval of the Secretary of the Interior. The Secretary shall not approve a resumption of service to an Indian who is able to pay all or a portion of a delinquent bill and fails to do so.

(h) [Removal of title restrictions from Reservation land—Consequences.]—When title restrictions are removed from any part or all of the Soboba Indian Reservation land, the responsibility and duties of the United States under the annexation and water service agreement shall cease with respect to such land, except for the installation and rehabilitation obligations undertaken in subsections 2 (c) and (e) unless otherwise provided by Act of Congress. Title to the water distribution facilities serving such lands shall at that time become the property of Eastern and the obligation of Eastern to provide water service to such land at cost to the district shall likewise cease. (84 Stat. 1465)

Sec. 3. [Secretary authorized to grant rights-of-way—Compensation for damage to property—Reversion.]—The Secretary is authorized to grant to Eastern without charge and subject to such conditions as he may prescribe (a) rights-of-way over Soboba Reservation lands necessary for the use, maintenance, and operation of supply and distribution facilities owned by the United States; (b) rights-of-way within which new service connections are installed after initial installation and rehabilitation work has been completed by Eastern; and (c) rights-of-way necessary for additional water main extensions and other waterworks facilities required for serving new development: *Provided*, That where title to the Soboba Reservation lands involved has been conveyed in fee simple by the United States the rights-of-way hereby authorized shall be subject to prior approval of the owner of record. Eastern shall construct, use, maintain, operate, or install the equipment or facilities for which the rights-of-way are granted in a manner that avoids damage to buildings, crops, or trees, or interference with growing of crops. Should such damage or interference occur, Eastern shall compensate the United States as trustee, or the fee owner of record. The rights-of-way granted shall revert to the United States or the owner of record when no

longer required for the purpose or purposes for which granted. (84 Stat. 1466)

Sec. 4. [Trust lands not to be alienated, encumbered or taxed.]—Nothing in this Act shall permit Metropolitan or Eastern, or their successors or assigns, to alienate, encumber, or tax any property belonging to an Indian or Indian band which is held in trust by the United States of America, or which is subject to a restriction against alienation imposed by the United States of America, while such property is exempt therefrom under Federal case law or provisions of other Federal statutes. (84 Stat. 1467)

Sec. 5. [Authorization of appropriations—Appropriation contingent upon submission of plan to Congress.]—There are authorized to be appropriated to carry out the provisions of subsection 2(c) not to exceed $316,658, in addition to the unexpended balance of sums previously appropriated and available for a water supply to the Soboba Reservation and the $30,000 provided pursuant to subsection 2(c), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved. There are also authorized to be appropriated such sums as may be necessary to make any payments guaranteed pursuant to subsection 2(g). No funds shall be appropriated pursuant to the authorization contained in this section until sixty calendar days (not counting days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) after the Secretary has submitted to the Congress a plan for the construction and use of the water supply and distribution facilities under subsection 2(c), and for the repayment of costs as provided in section 6, and then only if within said sixty days neither the House nor the Senate Committee on Interior and Insular Affairs disapproves by committee resolution the plan submitted. (84 Stat. 1467)

Sec. 6. [Pending claim not affected—Offset against possible award—Deductions from revenues]—Nothing in this Act shall affect the right of the Soboba Indians to pursue their claim against the United States under the Act of August 13, 1946 (60 Stat. 1049), now pending in docket numbered 80A before the Indian Claims Commission, but any expenditures under subsections 2(c), (e), and (g), and the $30,000 paid by the Metropolitan and used pursuant to subsection 2(c), may be used by the Commission either in mitigation of damages or as an offset against any award which the Indians may receive. If such amount exceeds the award, the excess, and all expenditures by the United States under subsections 2(c), (e), and (g) after the date of the award, shall be repaid to the United States, without interest, by deductions from revenues received by the Soboba Band or its members from the sale, lease or rental of the lands, such deductions to be in amounts that will reimburse the United States within fifty years, or as soon thereafter as possible, according to estimates of the Secretary of the Interior, which estimates may be revised from time to time: *Provided*, That deductions in any one year shall not exceed 50 per centum of the revenues received in that year. (84 Stat. 1467)

EXPLANATORY NOTE

Reference in the Text. The Act of August 13, 1946 (60 Stat. 1049, 25 U.S.C. § 70), referred to in the text, created the Indian Claims Commission. The 1946 Act does not appear herein.

Sec. 7. [Assignment of Reservation land—Modification, reduction, revocation by Indians or Secretary.]—Notwithstanding any other provision of law, any assignment of land on the Soboba Reservation shall be modified, reduced in size, revoked, or otherwise limited by the governing body of the Soboba Band, or by the Secretary of the Interior if in his judgment the governing body fails to act effectively, in order to assure that the benefits from the development of the land with water provided pursuant to this Act, other than for subsistence purposes, will accrue to the Band rather than to the assignee. (84 Stat. 1468)

Sec. 8. [Act of August 9, 1955 amended.]—The second sentence of section 1 of the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415), is hereby amended by inserting after "Gila River Reservation," the words "the Soboba Indian Reservation,". (84 Stat. 1468; 25 U.S.C § 415)

EXPLANATORY NOTE

Reference in the Text. The Act of August 9, 1955 (69 Stat. 539. 25 U.S.C. § 415), referred to in section 8 of the text, authorized the leasing of restricted Indian lands. The 1955 Act does not appear herein.

Sec. 9. [Provision of sanitation facilities and services not precluded.]—Nothing in this Act shall preclude the Soboba Band of Mission Indians and the Soboba Indian Reservation from being provided with sanitation facilities and services under the authority of section 7 of the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267). (Added by Act of September 30, 1976, § 304, 90 Stat. 1408)

EXPLANATORY NOTES

Not Codified. Sections 1 through 7 of the Act of December 17, 1970 are not codified in the U.S. Code.

1976 Amendment. Section 304 of the Act of September 30, 1976 (Public Law 94-437, 90 Stat. 1408) amended this Act by adding section 9. The 1976 Act does not appear herein.

Reference in the Text. Section 7 of the Act of August 5, 1954, as added by the Act of July 31, 1959, referred to in the text, authorizes the Surgeon General and the Secretary of the Interior to take certain actions with respect to providing sanitation facilities and services for Indians. Neither Act appears herein.

Legislative History. H.R. 3328 in the 91st Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 91-1017. Reported in Senate from Interior and Insular Affairs; S. Rept. No. 91-1387. Passed House May 18, 1970. Passed Senate December 4, 1970.

WATER BANK ACT

An act to provide for conserving surface waters; to preserve and improve habitat for migratory waterfowl and other wildlife resources; to reduce runoff, soil and wind erosion, and contribute to flood control; and for other purposes. (Act of December 19, 1970, Public Law 91-559, 84 Stat. 1468)

[Sec. 1. Short title.]—This Act may be cited as the "Water Bank Act". (84 Stat. 1468; 16 U.S.C. § 1301 note)

Sec. 2. [Purpose of the Act.]—The Congress finds that it is in the public interest to preserve, restore, and improve the wetlands of the Nation, and thereby to conserve surface waters, to preserve and improve habitat for migratory waterfowl and other wildlife resources, to reduce runoff, soil and wind erosion, and contribute to flood control, to contribute to improved water quality and reduce stream sedimentation, to contribute to improved subsurface moisture, to reduce acres of new land coming into production and to retire lands now in agricultural production, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. The Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized and directed to formulate and carry out a continuous program to prevent the serious loss of wetlands, and to preserve, restore, and improve such lands, which program shall begin on July 1, 1971. (84 Stat. 1468; 16 U.S.C. § 1301)

Sec. 3. [Authority of the Secretary—Agreements for conservation of water.]—In effectuating the water bank program authorized by this Act, the Secretary shall have authority to enter into agreements with landowners and operators in important migratory waterfowl nesting and breeding areas for the conservation of water on specified farm, ranch, or other wetlands identified in a conservation plan developed in cooperation with the Soil and Water Conservation District in which the lands are located, under such rules and regulations as the Secretary may prescribe. These agreements shall be entered into for a period of ten years, with provision for renewal for additional periods of ten years each. The Secretary shall, beginning in 1980, reexamine the payment rates at the beginning of the fifth year of any such ten-year initial or renewal period and before the beginning of any renewal period, in the light of the then current land and crop values, and make needed adjustments in rates for any such initial or renewal period as provided in section 5 of this Act. In addition, the Secretary shall, beginning in 1980, reexamine the payment rates in any agreement that has been in effect for five years or more in the light of current land and crop values and make any needed adjustments in rates. As used in this Act, the term 'wetlands' means (1) the inland fresh areas described as types 1 through 7 in Circular 39, Wetlands of the United States, published by the United States Department of the Interior (or the inland fresh areas corresponding to such types in any successor wetland classification system developed by

the Department of the Interior), (2) artificially developed inland fresh areas that meet the description of the inland fresh areas described in clause (1) of this sentence, and (3) such other wetland types as the Secretary may designate. No agreement shall be entered into under this Act concerning land with respect to which the ownership or control has changed in the two-year period preceding the first year of the agreement period unless the new ownership was acquired by will or succession as a result of the death of the previous owner, or unless the new ownership was acquired prior to July 1, 1971, under other circumstances which the Secretary determines, and specifies by regulation, will give adequate assurance that such land was not acquired for the purpose of placing it in the program, except that this sentence shall not be construed to prohibit the continuation of an agreement by a new owner or operator after an agreement has once been entered into under this Act. A person who has operated the land to be covered by an agreement under this Act for as long as two years preceding the date of the agreement and who controls the land for the agreement period shall not be required to own the land as a condition of eligibility for entering into the agreement. Nothing in this section shall prevent an owner or operator from placing land in the program if the land was acquired by the owner or operator to replace eligible land from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain. The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments or compensation under this program. No provision of this Act shall prevent an owner or operator who is participating in the program under this Act from participating in other Federal or State programs designed to conserve or protect wetlands. (84 Stat. 1469; Act of January 2, 1980, 93 Stat. 1317; 16 U.S.C. § 1302)

EXPLANATORY NOTE

1980 Amendment. The Act of January 2, 1980 (Public Law 96-182, 93 Stat. 1317) amended the third and fourth sentences of section 3 to read as they appear above. The 1980 Act does not appear herein.

Sec. 4. [Provisions of agreements—Obligations of owner or operator.]—In the agreement between the Secretary and an owner or operator, the owner or operator shall agree—

(1) to place in the program for the period of the agreement eligible wetland areas he designates, which areas may include wetlands covered by a Federal or State government easement which permits agricultural use, together with such adjacent areas as determined desirable by the Secretary;

(2) not to drain, burn, fill, or otherwise destroy the wetland character of such areas, nor to use such areas for agricultural purposes, as determined by the Secretary;

(3) to effectuate the wetland conservation and development plan for

his land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the Secretary pursuant to section 7 of this Act;

(4) to forfeit all rights to further payments or grants under the agreement and refund to the United States all payments or grants received thereunder upon his violation of the agreement at any stage during the time he has control of the land subject to the agreement if the Secretary determines that such violation is of such a nature as to warrant termination of the agreement, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the agreement;

(5) upon transfer of his right and interest in the lands subject to the agreement during the agreement period, to forfeit all rights to further payments or grants under the agreement and refund to the United States all payments or grants received thereunder during the year of the transfer unless the transferee of any such land agrees with the Secretary to assume all obligations of the agreement;

(6) not to adopt any practice specified by the Secretary in the agreement as a practice which would tend to defeat the purposes of the agreement; and

(7) to such additional provisions as the Secretary determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration. (84 Stat. 1470; 16 U.S.C. § 1303)

Sec. 5. [Provisions of agreements—Obligations of Secretary.]—In return for the agreement of the owner or operator, the Secretary shall (1) make an annual payment to the owner or operator for the period of the agreement at such rate or rates as the Secretary determines to be fair and reasonable in consideration of the obligations undertaken by the owner or operator; and (2) bear such part of the average cost of establishing and maintaining conservation and development practices on the wetlands and adjacent areas for the purposes of this Act as the Secretary determines to be appropriate. In making his determination, the Secretary shall consider, among other things, the rate of compensation necessary to encourage owners or operators of wetlands to participate in the water bank program. The rate or rates of annual payments as determined hereunder shall be increased, by an amount determined by the Secretary to be appropriate, in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas, if the owner or operator agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations. The rates of annual payment shall be adjusted, to the extent provided for in advance by appropriation Acts, in accordance with section 3 of the Act. (84 Stat. 1470; Act of January 2, 1980, 93 Stat. 1317; 16 U.S.C. § 1304)

EXPLANATORY NOTE

1980 Amendment. The Act of January 2, 1980 (Public Law 96-182, 93 Stat. 1317) amended section 5 by adding the last sentence. The 1980 Act does not appear herein.

Sec. 6. [Renewal of agreements—New owners.]—Any agreement may be renewed or extended at the end of the agreement period for an additional period of ten years by mutual agreement of the Secretary and the owner or operator, subject to any rate redetermination by the Secretary. If during the agreement period the owner or operator sells or otherwise divests himself of the ownership or right of occupancy of such land, the new owner or operator may continue such agreement under the same terms or conditions, or enter into a new agreement in accordance with the provisions of this Act, including the provisions for renewal and adjustment of payment rates, or he may choose not to participate in such program. (84 Stat. 1471; 16 U.S.C. § 1305)

Sec. 7. [Termination of agreement.]—The Secretary may terminate any agreement by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of agreements as he may determine to be desirable to carry out the purposes of the program or facilitate its administration. (84 Stat. 1471; 16 U.S.C. § 1306)

Sec. 8. [Utilization of local agencies.]—In carrying out the program, the Secretary may utilize the services of local, county, and State committees established under section 8 of the Soil Conservation and Domestic Allotment Act, as amended. The Secretary is authorized to utilize the facilities and services of the Commodity Credit Corporation in discharging his functions and responsibilities under this program. (84 Stat. 1471; 16 U.S.C. § 1307)

Sec. 9. [Establishment of Advisory Board.]—The Secretary may, without regard to the civil service laws, appoint an Advisory Board to advise and consult on matters relating to his functions under this Act as he deems appropriate. The Board shall consist of persons chosen from members of organizations such as wildlife organizations, land-grant colleges, farm organizations, State game and fish departments, soil and water conservation district associations, water management organizations, and representatives of the general public. Members of such an Advisory Board who are not regular full-time employees of the United States shall be entitled to reimbursement on an actual expense basis for attendance at Advisory Board meetings. (84 Stat. 1471; 16 U.S.C. § 1308)

Sec. 10. [Consultation with Secretary of the Interior.]—The Secretary shall consult with the Secretary of the Interior and take appropriate measures to insure that the program carried out pursuant to this Act is in harmony with wetlands programs administered by the Secretary of the Interior. He shall also, insofar as practicable, consult with and utilize the technical and related services of appropriate local, State, Federal, and private conservation agencies to assure coordination of the program with programs of

such agencies and a solid technical foundation for the program. (84 Stat. 1471; 16 U.S.C. § 1309)

Sec. 11. [Appropriation authorization—Limitations.]—There are hereby authorized to be appropriated without fiscal year limitation, such sums as may be necessary to carry out the program authorized by this Act. In carrying out the program, in each fiscal year through the fiscal year ending September 30, 1980, the Secretary shall not enter into agreements with owners and operators which would require payments to owners or operators in any calendar year under such agreements in excess of $10,000,000. In carrying out the program, in each fiscal year after the fiscal year ending September 30, 1980, the Secretary shall not enter into agreements with owners and operators which would require payments to owners or operators in any calendar year under such agreements in excess of $30,000,000. Not more than 15 percent of the funds authorized to be appropriated in any fiscal year after the fiscal year ending September 30, 1980, may be used for agreements entered into with owners or operators in any one State. (84 Stat. 1471; Act of January 2, 1980, 93 Stat. 1317; 16 U.S.C. § 1310)

EXPLANATORY NOTE

1980 Amendment. The Act of January 2, 1980 (Public Law 96-182, 93 Stat. 1317), amended Section 11 by inserting "in each fiscal year through the fiscal year ending September 30, 1980," after the word "program" in the second sentence and by adding the last two sentences. The 1980 Act does not appear herein.

Sec. 12. [Rules and regulations.]—The Secretary shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this Act. (84 Stat. 1471; 16 U.S.C. § 1311)

EXPLANATORY NOTE

Legislative History. H.R. 15770, Public Law 91-559 in the 91st Congress. Reported in House from Merchant Marine and Fisheries July 16, 1970; H.R. Rept. No. 91-1307. Passed House October 5, 1970. Reported in Senate from Agriculture and Forestry December 3, 1970; S. Rept. No. 91-1393. Passed Senate December 7, 1970.

SUSQUEHANNA RIVER BASIN COMPACT

An act consenting to the Susquehanna River Basin compact, enacting the same into law thereby making the United States a signatory party; making certain reservations on behalf of the United States, and for related purposes. (Act of December 24, 1970, Public Law 91-575, 84 Stat. 1509)

Section 1. The consent of Congress is hereby given to the Susquehanna River Basin compact in the form substantially as follows, and the compact is hereby enacted into law thereby making the United States a signatory party thereto:

"SUSQUEHANNA RIVER BASIN COMPACT

"Preamble

"Whereas the signatory parties hereto recognize the water resources of the Susquehanna River Basin as regional assets vested with local, state, and national interest for which they have a joint responsibility; and declare as follows:

"1. The conservation, utilization, development, management, and control of the water resources of the Susquehanna River Basin under comprehensive multiple purpose planning will bring the greatest benefits and produce the most efficient service in the public interest; and

"2. This comprehensive planning administered by a basin-wide agency will provide flood damage reduction, conservation and development of surface and ground water supply for municipal, industrial, and agricultural uses, development of recreational facilities in relation to reservoirs, lakes and streams, propagation of fish and game, promotion of forest land management, soil conservation, and watershed projects, protection and aid to fisheries, development of hydroelectric power potentialities, improved navigation, control of the movement of salt water, abatement and control of water pollution, and regulation of stream flows toward the attainment of these goals; and

"3. The water resources of the basin are presently subject to the duplicating, overlapping, and uncoordinated administration of a large number of governmental agencies which exercise a multiplicity of powers resulting in a splintering of authority and responsibility; and

"4. The Interstate Advisory Committee on the Susquehanna River Basin, created by action of the states of New York, Pennsylvania, and Maryland, on the basis of its studies and deliberation has concluded that regional development of the Susquehanna River Basin is feasible, advisable, and urgently needed, and has recommended that an intergovernmental compact with Federal participation be consummated to this end; and

"5. The Congress of the United States and the executive branch of the Federal government have recognized a national interest in the Susquehanna

River Basin by authorizing and directing the Corps of Engineers of the Department of the Army, the Department of Agriculture, the Department of Health, Education and Welfare, the Department of Interior, and other Federal agencies to cooperate in making comprehensive surveys and reports concerning the water resources of the Susquehanna River Basin in which individually or severally the technical aid and assistance of many Federal and state agencies have been enlisted, and which are being or have been coordinated through a Susquehanna River Basin Study Coordinating Committee on which the Corps of Engineers of the Department of the Army, the Department of Agriculture, the Department of Commerce, the Department of Health, Education and Welfare, the Department of Interior, the Department of Housing and Urban Development and its predecessor Housing and Home Finance Agency, the Federal Power Commission, and the States of New York, Pennsylvania, and Maryland are or were represented; and

"6 Some three million people live and work in the Susquehanna River Basin and its environs, and the government, employment, industry, and economic development of the entire region and the health, safety, and general well being of its population are and will continue to be affected vitally by the conservation, utilization, development, management, and control of the water resources of the basin; and

"7. Demands upon the water resources of the basin are expected to mount because of anticipated increases in population and by reason of industrial and economic growth of the basin and its service area; and

"8. Water resources planning and development are technical, complex, and expensive, often requiring fifteen to twenty years from the conception to the completion of large or extensive projects; and

"9. The public interest requires that facilities must be ready and operative when and where needed, to avoid the damages of unexpected floods or prolonged drought, and for other purposes; and

"10. The Interstate Advisory Committee on the Susquehanna River Basin has prepared a draft of an intergovernmental compact for the creation of a basin agency, and the signatory parties desire to effectuate the purposes thereof; Now therefore

"The States of New York and Maryland and the Commonwealth of Pennsylvania, and the United States of America hereby solemnly covenant and agree with each other, upon the enactment of concurrent legislation by the Congress of the United States and by the respective State legislatures, to the Susquehanna River Basin Compact which consists of this Preamble and the Articles that follow.

"ARTICLE 1

"SHORT TITLE, DEFINITIONS, PURPOSES, AND LIMITATIONS

"Section 1.1—Short Title. This compact shall be known and may be cited as the Susquehanna River Basin Compact.

"1.2—Definitions. For the purpose of this compact, and of any supplemental or concurring legislation enacted pursuant to it:

"1. 'Basin' shall mean the area of drainage of the Susquehanna River and its tributaries into Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

"2. 'Commission' shall mean the Susquehanna River Basin Commission hereby created, and the term 'Commissioner' shall mean a member of the commission.

"3. 'Cost' shall mean direct and indirect expenditures, commitment, and net induced adverse effects, whether or not compensated for, used or incurred in connection with the establishment, acquisition, construction, maintenance, and operation of a project.

"4. 'Diversion' shall mean the transfer of water into or from the basin.

"5. 'Facility' shall mean any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; or the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

"6. 'Federal government' shall mean the government of the United States of America, and any appropriate branch, department, bureau, or division thereof, as the case may be.

"7. 'Project' shall mean any work, service, or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken by the commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently or as an addition to an existing facility and can be considered as a separate entity for purposes of evaluation.

"8. 'Signatory party' shall mean a state or commonwealth party to this compact, or the Federal government.

"9. 'Water' shall mean both surface and underground waters which are contained within the drainage area of the Susquehanna River in the states of New York, Pennsylvania, and Maryland.

"10. 'Water resources' shall include all waters and related natural resources within the basin.

"11. 'Withdrawal' shall mean a taking or removal of water from any source within the basin for use within the basin.

"12. 'Person' shall mean an individual, corporation, partnership, unincorporated association, and the like and shall have no gender, and the singular shall include the plural.

"1.3—Purpose and Findings. That legislative bodies of the respective

signatory parties hereby find and declare:

"1. The water resources of the Susquehanna River Basin are affected with a local, state, regional, and national interest, and the planning, conservation, utilization, development, management, and control of these resources, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties.

"2. The water resources of the basin are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of these powers of sovereignty in the common interest of the people of the region.

"3. The water resources of the basin are functionally interrelated, and the uses of these resources are interdependent. A single administrative agency is therefore essential for effective and economical direction, supervision, and coordination of water resources efforts and programs of federal, state, and local governments and of private enterprise.

"4. Present and future demands require increasing economies and efficiencies in the use and reuse of water resources, and these can be brought about only by comprehensive planning, programming, and management under the direction of a single administrative agency.

"5. In general, the purposes of this compact are to promote interstate comity; to remove causes of possible controversy; to make secure and protect developments within the states; to encourage and provide for the planning, conservation, utilization, development, management, and control of the water resources of the basin; to provide for cooperative and coordinated planning and action by the signatory parties with respect to water resources; and to apply the principle of equal and uniform treatment to all users of water and of water related facilities without regard to political boundaries.

"6. It is the express intent of the signatory parties that the commission shall engage in the construction, operation, and maintenance of a project only when the project is necessary to the execution of the comprehensive plan and no other competent agency is in a position to act, or such agency fails to act.

"1.4—Powers of Congress; Withdrawal. Nothing in this compact shall be construed to relinquish the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provisions hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations. The power and right of the Congress to withdraw the Federal government as a party to this compact or to revise or modify the terms, conditions, and provisions under which it may remain a party by amendment, repeal, or modification of any Federal statute applicable hereto is recognized by the signatory parties.

"1.5—Duration of Compact.

"(a) The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not less than 20 years nor more than 25 years prior to the termination of the initial period or any succeeding period none of the

signatory states, by authority of an act of its legislature, notifies the commission of intention to terminate the compact at the end of the then current 100-year period.

"(b) In the event this compact should be terminated by operation of paragraph (a) above, the commission shall be dissolved, its assets and liabilities transferred in accordance with the equities of the signatory parties therein, and its corporate affairs wound up in accordance with agreement of the signatory parties or, failing agreement, by act of the Congress.

"ARTICLE 2

"ORGANIZATION AND AREA

"Section 2.1—Commission Created. The Susquehanna River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties.

"2.2—Commission Membership. The members of the commission shall be the governor or the designee of the governor of each signatory state, to act for him, and one member to be appointed by the President of the United States to serve at the pleasure of the President.

"2.3—Alternates. An alternate from each signatory party shall be appointed by its member of the commission unless otherwise provided by the laws of the signatory party. The alternate, in the absence of the member, shall represent the member and act for him. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as the original appointment.

"2.4—Compensation. Members of the commission and alternates shall serve without compensation from the commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

"2.5—Voting Power. Each member is entitled to one vote. No action of the commission may be taken unless three of the four members vote in favor thereof.

"2.6—Organization and Procedure. The commission shall provide for its own organization and procedure, and shall adopt the rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation from the commission, who may attend all meetings of the commission and its committees.

"2.7—Jurisdiction of the Commission. The commission shall have, exercise, and discharge its functions, powers, and duties within the limits of the basin. Outside the basin, the commision shall act at its discretion, but only to the extent necessary to implement its responsibilities within the basin, and where necessary subject to the consent of the state wherein it proposes to act.

"ARTICLE 3

"POWERS AND DUTIES OF THE COMMISSION

"Section 3.1—General. The Commission shall develop and effectuate plans, policies, and projects relating to the water resources of the basin. It shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin. It shall encourage and direct the planning, development, operation, and subject to applicable laws the financing of water resources projects according to such plans and policies.

"3.2—Policy. It is the policy of the signatory parties to preserve and utilize the functions, powers, and duties of the existing offices and agencies of government to the extent consistent with this compact, and the commission is directed to utilize those offices and agencies for the purposes of this compact.

"3.3—Comprehensive Plan, Program and Budgets. The commission in accordance with Article 14 of this compact, shall formulate and adopt:

"1. A comprehensive plan, after consultation with appropriate water users and interested public bodies for the immediate and long range development and use of the water resources of the basin;

"2. A water resources program, based upon the comprehensive plan, which shall include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects affecting the basin, together with a separate statement of the projects proposed to be undertaken by the commission during such period; and

"3. An annual current expense budget and an annual capital budget consistent with the commission's program, projects, and facilities for the budget period.

"3.4—Powers of Commission. The commission may:

"1. Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate, and maintain any and all projects, facilities, properties, activities, and services which are determined by the commission to be necessary, convenient, or useful for the purposes of this compact.

"2. Establish standards of planning, design, and operation of all projects and facilities in the basin to the extent they affect water resources, including without limitation thereto water, sewage and other waste treatment plants and facilities, pipelines, transmission lines, stream and lake recreational facilities, trunk mains for water distribution, local flood protection works, watershed management programs, and ground water recharging operations.

"3. Conduct and sponsor research on water resources and their planning, use, conservation, management, development, control, and protection, and the capacity, adaptability, and best utility of each facility thereof, and collect,

compile, correlate, analyze, report, and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other resources, industrial water technology, ground water movement, relation between water price and water demand and other economic factors, and general hydrological conditions.

"4. Collect, compile, coordinate, and interpret systematic surface and ground water data, and publicize such information when and as needed for water uses, flood warning, quality maintenance, or other purposes.

"5. Conduct ground and surface water investigations, tests, and operations, and compile data relating thereto, as may be required to formulate and administer the comprehensive plan.

"6. Prepare, publish, and disseminate information and reports concerning the water problems of the basin and for the presentation of the needs and resources of the basin and policies of the commission to executive and legislative branches of the signatory parties.

"7. Negotiate loans, grants, gifts, services, or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact, and receive and accept them upon terms and conditions, and subject to provisions, as may be required by Federal or state law or as the commission may deem necessary or desirable.

"8. Exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom.

"9. Adopt, amend, and repeal rules and regulations to implement this compact.

"3.5—Duties of the Commission. The commission shall:

"1. Develop and effectuate plans, policies, and projects relating to water resources, adopt, promote, and coordinate policies and standards for water resources conservation, control, utilization, and management, and promote and implement the planning, development, and financing of water resources projects.

"2. Undertake investigations, studies, and surveys, and acquire, construct, operate, and maintain projects and facilities in regard to the water resources of the basin, whenever it is deemed necessary to do so to activate or effectuate any of the provisions of this compact.

"3. Administer, manage, and control water resources in all matters determined by the commission to be interstate in nature or to have a major effect on the water resources and water resources management.

"4. Assume jurisdiction in any matter affecting water resources whenever it determines after investigation and public hearing upon due notice given, that the effectuation of the comprehensive plan or the implementation of this compact so requires. If the commission finds upon subsequent hearing requested by an affected signatory party that the party will take the necessary action, the commission may relinquish jurisdiction.

"5. Investigate and determine if the requirements of the compact or the rules and regulations of the commission are complied with, and if satisfac-

tory progress has not been made, institute an action or actions in its own name in any state or federal court of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules and regulations of the commission adopted pursuant thereto. An action shall be instituted in the name of the commission and shall be conducted by its own counsel.

"3.6—Cooperative Legislation and Further Jurisdiction.

"(a) Each of the signatory parties agrees that it will seek enactment of such additional legislation as will be required to enable its officers, departments, commissions, boards, and agents to accomplish effectively the obligations and duties assumed under the terms of this compact.

"(b) Nothing in the compact shall be construed to repeal, modify or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions within its jurisdiction.

"3.7—Coordination and Cooperation. The commission shall promote and aid the coordination of the activities and programs of Federal, state, municipal, and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the commission may:

"1. Advise, consult, contract, financially assist, or otherwise cooperate with any and all such agencies;

"2. Employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation, and maintenance of structures, and the installation and management of river control systems, or for any other purpose;

"3. Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan incorporate any separate plans of other public and private organizations operating in the basin, and permit the decentralized administration thereof;

"4. Qualify as a sponsoring agency under any Federal legislation heretofore or hereafter enacted to provide financial or other assistance for the planning, conservation, utilization, development, management, or control of water resources.

"3.8—Allocations, Diversions, and Releases.

"(a) The commission shall have power from time to time as the need appears, to allocate the waters of the basin to and among the states signatory to this compact and impose related conditions, obligations, and release requirements.

"(b) The commission shall have power from time to time as the need appears to enter into agreements with other river basin commissions or other states with respect to in-basin and out-of-basin allocations, withdrawals, and diversions.

"(c) No allocation of waters made pursuant to this section shall constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among

the parties hereto. This subsection shall not be deemed to limit or restrict the power of the commission to enter into convenants with respect to water supply, with a duration not exceeding the life of this compact, as it may deem necessary for the benefit or development of the water resources of the basin.

"3.9—Rates and Charges. The commission, from time to time after public hearing upon due notice given may fix, alter, and revise rates, rentals, charges, and tolls, and classifications thereof, without regulation or control by any department, office, or agency of any signatory party, for the use of facilities owned or operated by it, and any services or products which it provides.

"3.10—Referral and Review. No projects affecting the water resources of the basin, except those not requiring review and approval by the commission under paragraph 3 following, shall be undertaken by any person, governmental authority or other entity prior to submission to and approval by the commission or appropriate agencies of the signatory parties for review.

"1. All water resources projects for which a permit or other form of permission to proceed with construction or implementation is required by legislative action of a signatory party or by rule or regulation of an office or agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources shall be submitted as heretofore to the appropriate office or agency of the signatory party for review and approval. To assure that the commission is apprised of all projects within the basin, monthly reports and listings of all permits granted, or similar actions taken, by offices or agencies of the signatory parties shall be submitted to the commission in a manner prescribed by it.

"Those projects which also require commission approval pursuant to the provisions of paragraphs 2(ii) and 2(iii) following shall be submitted to the commission through appropriate offices or agencies of a signatory party, except that, if no agency of a signatory party has jurisdiction, such projects shall be submitted directly to the commission in such manner as the commission shall prescribe.

"2. Approval of the commission shall be required for, but not limited to, the following:

"(i) All projects on or crossing the boundary between any two signatory states;

"(ii) Any project involving the diversion of water;

"(iii) Any project within the boundaries of any signatory state found and determined by the commission or by any agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources to have a significant effect on water resources within another signatory state; and

"(iv) Any project which has been included by the commission after hearing, as provided in Article 14, Section 14.1, as a part of the commission's comprehensive plan for the development of the water resources of the basin,

or which would have a significant effect upon the plan.

"3. Review and approval by the commission shall not be required for:

"(i) Projects which fall into an exempt classification or designation established by legislative action of a signatory party or by rule or regulation of an office or agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources. The sponsors of those projects are not required to obtain a permit or other form of permission to proceed with construction or implementation, unless it is determined by the commission or by the agency of a signatory party that such project or projects may cause an adverse, adverse cumulative, or an interstate effect on water resources of the basin, and the project sponsor has been notified in writing by the commission or by the agency of a signatory party that commission approval is required.

"(ii) Projects which are classified by the commission as not requiring its review and approval, for so long as they are so classified.

"4. The commission shall approve a project if it determines that the project is not detrimental to the proper conservation, development, management, or control of the water resources of the basin and may modify and approve as modified, or may disapprove the project, if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

"5. The commission, after consultation with the appropriate offices or agencies of the signatory parties shall establish the procedure of submission, review, and consideration of projects. And procedure for review and approval of diversions of water shall include public hearing on due notice given, with opportunity for interested persons, agencies, governmental units, and signatory parties to be heard and to present evidence. A complete transcript of the proceedings at the hearing shall be made and preserved, and it shall be made available under rules for that purpose adopted by the commission.

"6. Any determination of the commission pursuant to this article or any article of the compact providing for judicial review shall be subject to such judicial review in any court of competent jurisdiction, provided that an action or proceeding for such review is commenced within 90 days from the effective date of the determination sought to be reviewed; but a determination of the commission concerning a diversion, under Section 3.10–2(ii) with the claimed effect of reducing below a proper minimum the flow of water in that portion of the basin within the area of a signatory party, shall be subject to judicial review under the particular provisions of paragraph 7 below.

"7. Any signatory party deeming itself aggrieved by an
ction of the commission concerning a diversion under Section 3.10–2(ii) with the claimed effect of reducing below a proper minimum the flow of water in that portion of the basin which lies within the area of that signatory party, and notwithstanding the powers provided to the commission by this compact, may have review of commission action approving the diversion in

the Supreme Court of the United States; provided that a proceeding for such review is commenced within one year from the date of action sought to be reviewed. Any such review shall be on the record made before the commission. The action of the commission shall be affirmed, unless the court finds that it is not supported by substantial evidence.

"**3.11—Advisory Committees.** The commission may constitute and empower advisory committees.

"ARTICLE 4

"WATER SUPPLY

"**Section 4.1—Generally.** The commission shall have power to develop, implement, and effectuate plans and projects for the use of the water of the basin for domestic, municipal, agricultural, and industrial water supply. To this end, without limitation thereto, it may provide for, construct, acquire, operate, and maintain dams, reservoirs, and other facilities for utilization of surface and ground water resources, and all related structures, appurtenances, and equipment on the river and its tributaries and at such off-river sites as it may find appropriate, and may regulate and control the use thereof.

"**4.2—Storage and Release of Waters.**

"(a) The commission shall have power to acquire, construct, operate, and control projects and facilities for the storage and release of waters, for the regulation of flows and supplies of surface and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and abatement of pollution, the prevention of undue salinity, and other purposes.

"(b) No signatory party shall permit any augmentation of flow to be diminished by the diversion of any water of the basin during any period in which waters are being released from storage under the direction of the commission for the purpose of augmenting such flow, except in cases where the diversion is authorized by this compact, or by the commission pursuant thereto, or by the judgment, order, or decree of a court of competent jurisdiction.

"**4.3—Assessable Improvements.** The commission may provide water management and regulation in the main stream or any tributary in the basin and, in accordance with the procedures of applicable state laws, may assess on an annual basis or otherwise the cost thereof upon water users or any classification of them specially benefited thereby to a measurable extent, provided that no such assessment shall exceed the actual benefit to any water user. Any such assessment shall follow the procedure prescribed by law for local improvement assessments and shall be subject to review in any court of competent jurisdiction.

"**4.4—Coordination.** Prior to entering upon the execution of any project authorized by this article, the commission shall review and consider all existing rights, plans, and programs of the signatory parties, their political subdivisions, private parties, and water users which are pertinent to such

project, and shall hold a public hearing on each proposed project.

"4.5—Additional Powers. In connection with any project authorized by this article, the commission shall have power to provide storage, treatment, pumping, and transmission facilities, but nothing herein shall be construed to authorize the commission to engage in the business of distributing water.

"ARTICLE 5

"WATER QUALITY MANAGEMENT AND CONTROL

"Section 5.1—General Powers.

"(a) The commission may undertake or contract for investigations, studies, and surveys pertaining to existing water quality, effects of varied actual or projected operations on water quality, new compounds and materials and probable future water quality in the basin. The commission may receive, expend, and administer funds, Federal, state, local, or private as may be available to carry out these functions relating to water quality investigations.

"(b) The commission may acquire, construct, operate, and maintain projects and facilities for the management and control of water quality in the basin whenever the commission deems necessary to activate or effectuate any of the provisions of this compact.

"5.2—Policy and Standards.

"(a) In order to conserve, protect, and utilize the water quality of the basin in accordance with the best interests of the people of the basin and the states, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory parties to prevent, reduce, control and eliminate water pollution and to maintain water quality as required by the comprehensive plan.

"(b) The legislative intent in enacting this article is to give specific emphasis to the primary role of the states in water quality management and control.

"(c) The commission shall recommend to the signatory parties the establishment, modification, or amendment of standards of quality for any waters of the basin in relation to their reasonable and necessary use as the commission shall deem to be in the public interest.

"(d) The commission shall encourage cooperation and uniform enforcement programs and policies by the water quality control agencies of the signatory parties in meeting the water quality standards established in the comprehensive plan.

"(e) The commission may assume jurisdiction whenever it determines after investigation and public hearing upon due notice given that the effectuation of the comprehensive plan so requires. After such investigation, notice, and hearing, the commission may adopt such rules, regulations, and water quality standards as may be required to preserve, protect, improve, and develop the quality of the waters of the basin in accordance with the comprehensive plan.

"5.3—Cooperative Administration and Enforcement.

"(a) Each of the signatory parties agrees to prohibit and control pollution

of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the waters of the basin.

"(b) The commission shall have the authority to investigate and determine if the requirements of the compact or the rules, regulations, and water quality standards of the commission are complied with and if satisfactory progress has not been made, may institute an action or actions in its own name in the proper court or courts of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules, regulations, and water quality standards of the commission adopted pursuant thereto.

"5.4—Further Jurisdiction. Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

"ARTICLE 6

"FLOOD PROTECTION

"Section 6.1—Flood Control Authority. The commission may plan, design, construct and operate and maintain projects and facilities it deems necessary or desirable for flood plain development and flood damage reduction. It shall have power to operate such facilities and to store and release waters of the Susquehanna River and its tributaries and elsewhere within the basin, in such manner, at such times, and under such regulations as the commission may deem appropriate to meet flood conditions as they may arise.

"6.2—Regulation.

"(a) The commission may study and determine the nature and extent of the flood plains of the Susquehanna River and its tributaries. Upon the basis of the studies, it may delineate areas subject to flooding, including but not limited to a classification of lands with reference to relative risk of flooding and the establishment of standards for flood plain use which will promote economic development and safeguard the public health, welfare, safety, and property. Prior to the adoption of any standards delineating the area or defining the use, the commission shall hold public hearings with respect to the substance of the standards in the manner provided by Article 15. The proposed standards shall be available from the commission at the time notice is given, and interested persons shall be given an opportunity to be heard thereon at the hearings.

"(b) The commission shall have power to promulgate, adopt, amend, and repeal from time to time as necessary, standards relating to the nature and extent of the uses of land in areas subject to flooding.

"(c) In taking action pursuant to subsection (b) of this section and as a prerequisite thereto, the commission shall consider the effect of particular uses of the flood plain in question on the health and safety of persons and property in the basin, the economic and technical feasibility of measures

available for the development and protection of the flood plain, and the responsibilities, if any, of local, state, and federal governments connected with the use or proposed use of the flood plain in question. The commission shall regulate the use of particular flood plains in the manner and degree it finds necessary for the factors enumerated in this subsection, but only with the consent of the affected signatory state, and shall suspend such regulation when and so long as the signatory party or parties, or political subdivision possessing jurisdiction have in force applicable laws which the commission finds give adequate protection for the purpose of this section.

"(d) In order to conserve, protect, and utilize the Susquehanna River and its tributaries in accordance with the best interests of the people of the basin and the signatory parties, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory parties to control modification of the river and its tributaries by encroachment.

"**6.3—Flood Lands Acquisition.** The commission shall have power to acquire the fee or any lesser interest in lands and improvements thereon within the area of a flood plain for the purpose of regulating the use or types of construction of such property to minimize the flood hazard, convert the property to uses or types of construction appropriate to flood plain conditions, or prevent constrictions or obstructions that reduce the ability of the river channel and flood plain to carry flood water.

"**6.4—Existing Structures.** No rule or regulation issued by the commission pursuant to this compact shall be construed to require the demolition, removal, or alteration of any structure in place or under construction prior to the issuance thereof, without the payment of just compensation therefor. However, new construction or any addition to or alteration in any existing structure made or commenced subsequent to the issuance of such rule or regulation, or amendment, shall conform thereto.

"**6.5—Police Powers.** The regulation of use of flood plain lands is within the police powers of the signatory states for the protection of public health and the safety of the people and their property and shall not be deemed a taking of land or lands for which compensation shall be paid to the owners thereof.

"**6.6—Cooperation.** Each of the signatory parties agrees to control flood plain use along and encroachment upon the Susquehanna River and its tributaries and to cooperate faithfully in these respects.

"**6.7—Other Authority.** Nothing in this article shall be construed to prevent or in any way to limit the power of any signatory party, or any agency or subdivision thereof, to issue or adopt and enforce any requirement or requirements with respect to flood plain use or construction thereon more stringent than the rules, regulations, or encroachment lines in force pursuant to this article. The commission may appear in any court of competent jurisdiction to bring actions or proceedings in law or equity to enforce the provisions of this article.

"**6.8—Debris.** The signatory states agree that dumping or littering upon or in the waters of the Susquehanna River or its tributaries or upon the frozen surfaces thereof of any rubbish, trash, litter, debris, abandoned prop-

erties, waste material, or offensive matter, is prohibited and that the law enforcement officials of each state shall enforce this prohibition.

"ARTICLE 7

"WATERSHED MANAGEMENT

"Section 7.1—Watersheds Generally. The commission shall promote sound practices of watershed management in the basin, including projects and facilities to retard runoff and waterflow and prevent soil erosion.

"7.2—Soil Conservation and Land and Forest Management. The commission, subject to the limitations in Section 7.4(b) may acquire, sponsor, or operate facilities and projects to encourage soil conservation, prevent and control erosion, and promote land reclamation and sound land and forest management.

"7.3—Fish and Wildlife. The commission, subject to the limitations in Section 7.4(b) may acquire, sponsor, or operate projects and facilities for the maintenance and improvement of fish and wildlife habitat related to the water resources of the basin.

"7.4—Cooperative Planning and Operation.

"(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

"(b) The commission shall not acquire or operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is in a position to acquire or operate the same upon reasonable conditions, or such unit or agency fails to do so.

"ARTICLE 8

"RECREATION

"Section 8.1—Development. The commission may provide for the development of water related public sports and recreational facilities. The commission on its own account or in cooperation with a signatory party, political subdivision or any agency thereof, may provide for the construction, maintenance, and administration of such facilities, subject to the provisions of Section 8.2 hereof.

"8.2—Cooperative Planning and Operation.

"(a)The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

"(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions.

"8.3—Operation and Maintenance. The commission, within limits prescribed by this article, shall:

"1. Encourage activities of other public agencies having water related recreational interests and assist in the coordination thereof;

"2. Recommend standards for the development and administration of water related recreational facilities;

"3. Provide for the administration, operation, and maintenance of recreation facilities owned or controlled by the commission and for the letting and supervision of private concessions in accordance with this article.

"8.4—Concessions. The commission, after public hearing upon due notice given shall provide by regulation a procedure for the award of contracts for private concessions in connection with its recreational facilities, including any renewal or extension thereof, under terms and conditions determined by the commission.

"ARTICLE 9

"OTHER PUBLIC VALUES

"Section 9.1—Inherent Values. The signatory parties agree that it is a purpose of this compact in effectuating the conservation and management of water resources to preserve and promote the economic and other values inherent in the historic and the scenic and other natural amenities of the Susquehanna River Basin for the enjoyment and enrichment of future generations, for the promotion and protection of tourist attractions in the basin, and for the maintenance of the economic health of allied enterprises and occupations so as to effect orderly, balanced, and considered development in the basin.

"9.2—Project Compatibility. To this end, the signatory parties agree that in the consideration, authorization, construction, maintenance, and operation of all water resources projects in the Susquehanna basin, their agencies and subdivisions, and the Susquehanna River Basin Commission will consider the compatibility of such projects with these other public values.

"9.3—Regulation Standards. The commission may recommend to governmental units with jurisdiction within areas considered for scenic or historic designation minimum standards of regulation of land and water use and such other protective measures as the commission may deem desirable.

"9.4—Local Area Protection. The commission may draft and recommend for adoption ordinances and regulations which would assist, promote, develop, and protect those areas and the character of their communities. Local governments may consider parts of their area which have been designated scenic or historic areas under the provisions of this article separately from the municipality as a whole, and pursuant to the laws of the state governing the adoption of those regulations generally may enact regulations limited to the designated area. In making recommendations to a local government which is partly in and partly out of such a scenic or historic area the commission may make recommendations for the entire municipality.

"ARTICLE 10

"HYDROELECTRIC POWER

"Section 10.1—Development. The waters of the Susquehanna River and its tributaries may be impounded and used by or under authority of the commission for the generation of hydroelectric power and hydroelectric energy in accordance with the comprehensive plan.

"10.2—Power Generation. The commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating hydroelectric power and hydroelectric energy.

"10.3—Transmission. The commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the commission to engage in the business of direct sale to consumers.

"10.4—Development Contracts. The commission, after public hearing upon due notice given, may enter into contracts on reasonable terms, consideration, and duration under which public utilities or public agencies may develop hydroelectric power and hydroelectric energy through the use of dams, related facilities, and appurtenances.

"10.5—Rates and Charges. Rates and charges fixed by the commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

"ARTICLE 11

"REGULATION OF WITHDRAWAL AND DIVERSIONS; PROTECTED AREAS AND EMERGENCIES

"Section 11.1—Power of Regulation. The commission may regulate and control withdrawals and diversions from surface waters and ground waters of the basin, as provided by this article. The commission may enter into agreements with the signatory parties relating to the exercise of such power or regulation or control and may delegate to any of them such powers of the commission as it may deem necessary or desirable.

"11.2—Determination of Protected Area. The commission, from time to time after public hearing upon due notice given, may determine and delineate such areas within the basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage or impair or conflict with the requirements or effectuation of the comprehensive plan, and any such area may be designated as a protected area, with the consent of the member or members from the affected state or states. The commission, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such determination.

"11.3—Diversion and Withdrawal Permits. In any protected areas so

determined and delineated, no person shall divert or withdraw water for domestic, municipal, agricultural, or industrial uses in excess of such quantities as the commission may prescribe by general regulations, except (1) pursuant to a permit granted under this article, or (2) pursuant to a permit or approval heretofore granted under the laws of any of the signatory states.

"11.4—Emergency.

"(a) In the event of a drought which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the commission after public hearing upon due notice given, may determine and delineate the area of the shortage and by unanimous vote declare a drought emergency therein. For the duration of the drought emergency as determined by the commission, it thereupon may direct increases or decreases in any allocations, diversions, or releases previously granted or required, for a limited time to meet the emergency condition.

"(b) In the event of a disaster or catastrophe other than drought, natural or manmade, which causes or may cause an actual and immediate shortage of available and usable water, the commission by unanimous consent may impose direct controls on the use of water and shall take such action as is necessary to coordinate the effort of federal, state, and local agencies and other persons and entities affected.

"11.5—Standards. Permits shall be granted, modified, or denied, as the case may be, to avoid such depletion of the natural stream flows and ground waters in the protected area or in any emergency area as will adversely affect the comprehensive plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water of the quality required.

"11.6—Judicial Review. The determinations and delineations of the commission pursuant to Section 11.2 and the granting, modification or denial of permits pursuant to Sections 11.3, 11.4, and 11.5 shall be subject to judicial review in any court of competent jurisdiction.

"11.7—Maintenance of Records. Each signatory party shall provide for the maintenance and preservation of such records of authorized diversions and withdrawals and the annual volume thereof as the commission shall prescribe. Such records and supplementary reports shall be furnished to the commission at its request.

"11.8—Existing State Systems. Whenever the commission finds it necessary or desirable to exercise the powers conferred with respect to emergencies by this article, any diversion or withdrawal permits authorized or issued under the laws of any of the signatory states shall be superseded to the extent of any conflict with the control and regulation exercised by the commission.

"ARTICLE 12

"INTERGOVERNMENTAL RELATIONS

"Section 12.1—Federal Agencies and Projects. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission

as a regional agency of the signatory parties, the following rules shall govern Federal projects affecting the water resources of the basin, subject in each case to the provisions of Section 1.4 of this compact:

"1. The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission.

"2. No expenditure or commitment shall be made for or on account of the construction, acquisition, or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the commission in the comprehensive plan.

"3. Each Federal agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise, and discharge such authority except as specifically provided by this section.

"12.2—State and Local Agencies and Projects. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern projects of the signatory states, their political subdivisions and public corporations affecting water resources of the basin:

"1. The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission;

"2. No expenditure or commitment shall be made for or on account of the construction, acquisition, or operation of any project or facility unless it first has been included by the commission in the comprehensive plan;

"3. Each state and local agency otherwise authorized by law to plan, design, construct, operate, or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority, except as specifically provided by this section.

"12.3—Reserved Taxing Powers of States. Each of the signatory parties reserves the right to levy, assess, and collect fees, charges, and taxes on or measured by the withdrawal or diversion of waters of the basin for use within the jurisdiction of the respective signatory parties.

"12.4—Project Costs and Evaluation Standards. The commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocations of projects affecting the basin, and for the determination of project priorities, pursuant to the requirements of the comprehensive plan and its water resources program. The commission shall develop equitable cost sharing and reimbursement formulas for the signatory parties including:

"1. Uniform and consistent procedures for the allocation of project costs among purposes included in multiple-purpose programs;

"2. Contracts and arrangements for sharing financial responsibility among and with signatory parties, public bodies, groups, and private enterprise, and for the supervision of their performance;

"3. Establishment and supervision of a system of accounts for reimbursement purposes and directing the payments and charges to be made from

such accounts;

"4. Determining the basis and apportioning amounts (i) of reimbursable revenues to be paid signatory parties or their political subdivisions, and (ii) of payments in lieu of taxes to any of them.

"12.5—Cooperative Services. The commission shall furnish technical services, advice, and consultation to authorized agencies of the signatory parties with respect to the water resources of the basin, and each of the signatory parties pledges itself to provide technical and administrative service to the commission upon request, within the limits of available appropriations, and to cooperate generally with the commission for the purposes of this compact, and the cost of such service may be reimbursable whenever the parties deem appropriate.

"ARTICLE 13

"CAPITAL FINANCING

"Section 13.1—Borrowing Power. The commission may borrow money for any of the purposes of this compact and may issue its negotiable bonds and other evidences of indebtedness in respect thereto.

"All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the commission without recourse to taxation. The bonds and other obligations of the commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the commission, and the full faith and credit of the commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the commission assumed by it to or for the benefit of the holders thereof.

"13.2—Funds and Expenses. The purposes of this compact shall include without limitation thereto all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial consultant, and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with the planning, design, acquisition, construction, completion, improvement, or reconstruction of any facility or any part thereof; and reimbursement of advances by the commission or by others for such purposes and for working capital.

"13.3—Credit Excluded; Officers, State and Municipal. The commission shall have no power to pledge the credit of any signatory party or of any county or municipality, or to impose any obligation for payment of the bonds upon any signatory party or any county or municipality. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the commission or be subject to any personal liability or accountability by reason of the issuance thereof.

"13.4—Funding and Refunding. Whenever the commission deems it expedient, it may fund and refund its bonds and other obligations, whether

or not such bonds and obligations have matured. It may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including payment of any premium, duplicate interest, or cash adjustment required in connection therewith) issued by the commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the commission or which are payable out of the revenues of any facility acquired by the commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the commission. All provisions of this compact applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale, or exchange thereof.

"**13.5—Bonds: Authorization Generally.** Bonds and other indebtedness of the commission shall be authorized by resolution of the commission. The validity of the authorization and issuance of any bonds by the commission shall not be dependent upon or affected in any way by: (1) the disposition of bond proceeds by the commission or by contract, commitment or action taken with respect to such proceeds; or (2) the failure to complete any part of the project for which bonds are authorized to be issued. The commission may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues, and franchises under its control. Bonds may be issued by the commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to both principal and interest, as may be determined by the commission. The commission may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the commission may determine.

"**13.6—Bonds, Resolutions and Indentures Generally.** The commission may determine and enter into indentures providing for the principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, interchange, and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded. The resolution of the commission, authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions other than any restriction on the regulatory powers vested in the commission by this compact as the commission may deem necessary or desirable for the issue, payment, security, protection, or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents, and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application, and disposition of such revenues, of the proceeds of the bonds, and of any other moneys of the commission; the operation, maintenance, repair, and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease, or other disposition of the facilities; the insuring

of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities, the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

"**13.7—Maximum Maturity.** No bond or its terms shall mature in more than fifty years from its own date, or on any date subsequent to the duration of this compact, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

"**13.8—Tax Exemption.** All bonds issued by the commission under the provisions of this compact and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any of the signatory parties, except for transfer, inheritance and estate taxes.

"**13.9—Interest.** Bonds shall bear interest at a rate of not to exceed six percent per annum, payable annually or semi-annually.

"**13.10—Place of Payment.** The commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

"**13.11—Execution.** The commission may provide for the execution and authentication of bonds by the manual, lithographed, or printed facsimile signature of officers of the commission, and by additional authentication by a trustee or fiscal agent appointed by the commission. If any of the officers whose signatures or countersignatures appear upon the bonds or coupons ceases to be an officer before the delivery of the bonds or coupons, his signature or countersignature is nevertheless valid and of the same force and effect as if the officer had remained in office until the delivery of the bonds and coupons.

"**13.12—Holding Own Bonds.** The commission shall have power out of any funds available therefor to purchase its bonds and may hold, cancel, or resell such bonds.

"**13.13—Sale.** The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The commission may sell at less than their par or face value, but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the commission calculated upon the entire issue so sold of more than six percent per annum payable semi-annually,

according to standard tables of bond values. All bonds issued and sold for cash pursuant to this compact shall be sold on sealed proposals to the highest bidder. Prior to such sale, the commission shall advertise for bids by publication of a notice of sale not less than ten days prior to the date of sale, at least once in a newspaper of general circulation printed and published in New York City carrying municipal bonds notices and devoted primarily to financial news. The commission may reject any and all bids submitted and may thereafter sell the bonds so advertised for sale at private sale to any financially responsible bidder under such terms and conditions as it deems most advantageous to the public interest, but the bond shall not be sold at a net interest cost calculated upon the entire issue so advertised, greater than the lowest bid which was rejected. In the event the commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenues of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, plus an additional amount of cash, without advertising such bonds for sale.

"**13.14—Negotiability.** All bonds issued under the provisions of this compact are negotiable instruments, except when registered in the name of a registered owner.

"**13.15—Legal Investments.** Bonds of the commission shall be legal investments for savings banks, fiduciaries and public funds in each of the signatory states.

"**13.16—Validation Proceedings.** Prior to the issuance of any bonds, the commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceedings shall be instituted and prosecuted in rem, and the judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

"**13.17—Recording.** No indenture need be recorded or filed in any public office, other than the office of the commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipts of such revenues by the commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the commission or the indenture trustee.

"**13.18—Pledged Revenues.** Bond redemption and interest payments, to the extent provided in the resolution or indenture, shall constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees, and charges and other revenues and interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds, and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements, or extensions of the facilities or other purposes shall not be used or pledged

for any other purpose so long as such bonds, or any of them, are outstanding, and unpaid.

"13.19—Remedies. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated; (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the commission or assumed by it, its officers, agents, or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of the facilities, or in connection with the collection, deposit, investment, application, and disbursement of the rates, rents, tolls, fees, charges, and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the commission to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies, however, does not exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

"13.20—Capital Financing by Signatory Parties: Guarantees.

"(a) The signatory parties shall provide such capital funds required for projects of the commission as may be authorized by their respective statutes in accordance with a cost sharing plan prepared pursuant to Article 12 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any of the signatory parties other than such obligations as may be assumed by a signatory party in connection with a specific project or facility.

"(b) Bonds of the commission, notwithstanding any other provision of this compact, may be executed and delivered to any duly authorized agency of any of the signatory parties without public offering and may be sold and resold with or without the guaranty of such signatory party, subject to and in accordance with the constitutions of the respective signatory parties.

"(c) The commission may receive and accept, and the signatory parties may make, loans, grants, appropriations, advances, and payments of reimbursable or nonreimbursable funds or property in any form for the capital or operating purposes of the commission.

"ARTICLE 14

"PLAN, PROGRAM AND BUDGETS

"Section 14.1—Comprehensive Plan. The commission shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin to meet present and

future needs. The commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties, their political subdivisions, and interested groups. The commission shall conduct public hearings upon due notice given with respect to the comprehensive plan prior to the adoption of the plan or any part of the revision thereof, except that public and private projects and facilities which, in the judgment of the commission, are not required for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin and which, in the judgment of the commission, will not significantly affect the water resources of the basin, may be added directly to the comprehensive plan at any time at the discretion of the commission without public hearing thereon. The comprehensive plan shall take into consideration the effect of the plan or any part thereof upon the receiving waters of Chesapeake Bay.

"14.2—Water Resources Program. The commission shall annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken by the commission and by other authorized governmental and private agencies, organizations, and persons during the ensuing six years or such other reasonably foreseeable period as the commission may determine. The water resources program shall include a systematic presentation of:

"1. The quantity and quality of water resources needs for such period;

"2. The existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated; and

"3. A separate statement of the projects proposed to be undertaken by the commission during such period.

"14.3—Annual Current Expense and Capital Budgets.

"(a) The commission shall annually adopt a capital budget including all capital projects it proposes to undertake or continue during the budget period containing a statement of the estimated cost of each project and the method of financing thereof.

"(b) The commission shall annually adopt a current expense budget for each fiscal year. Such budget shall include the commission's estimated expenses for administration, operation, maintenance, and repairs, including a separate statement thereof for each project, together with its cost allocation. The total of such expenses shall be balanced by the commission's estimated revenues from all sources, including the cost allocations undertaken by any of the signatory parties in connection with any project. Following the adoption of the annual current expense budget by the commission, the executive director of the commission shall:

"1. Certify to the respective signatory parties the amounts due in accordance with existing cost sharing established for each project; and

"2. Transmit certified copies of such budget to the principal budget

officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The amount required to balance the current expense budget in addition to the aggregate amount of item 1 above and all other revenues available to the commission shall be apportioned equitably among the signatory parties by unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

"(c) The respective signatory parties covenant and agree to include the amounts so apportioned for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget pending remittance by the signatory parties.

"ARTICLE 15

"GENERAL PROVISIONS

"Section 15.1—Auxiliary Powers of Commission; Functions of Commissioners.

"(a) The commission, for the purposes of this compact, may:

"1. Adopt and use a corporate seal, enter into contracts, and sue and be sued in any court of competent jurisdiction;

"2. Receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by any signatory party or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or part thereof;

"3. Provide for, acquire, and adopt detailed engineering, administrative, financial, and operating plans and specifications to effectuate, maintain, or develop any facility or project;

"4. Control and regulate the use of facilities owned or operated by the commission;

"5. Acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, lease, license, mortgage, or otherwise as it may deem necessary for any project or facility, including any and all appurtenances thereto necessary, useful, or convenient for such ownership, operation, control, maintenance, or conveyance;

"6. Have and exercise all corporate powers essential to the declared objects and purposes of the commission.

"(b) The commissioners, subject to the provisions of this compact, shall:

"1. Serve as the governing body of the commission, and exercise and discharge its powers and duties, except as otherwise provided by or pursuant to this compact;

"2. Determine the character of and the necessity for its obligations and

expenditures and the manner in which they shall be incurred, allowed, and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by this compact;

"3. Provide for the internal organization and administration of the commission;

"4. Appoint the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;

"5. Create and abolish offices, employments, and positions as it deems necessary for the purposes of the commission, and subject to the provisions of this article, fix and provide for the qualifications, appointments, removal, term, tenure, compensation, pension, and retirement rights of its officers and employees;

"6. Let and execute contracts to carry out the powers of the commission.

"15.2—Regulations; Enforcement. The commission may:

"1. Make and enforce rules and regulations for the effectuation, application, and enforcement of this compact; and it may adopt and enforce practices and schedules for or in connection with the use, maintenance, and administration of projects and facilities it may own or operate and any product or service rendered thereby; provided that any rule or regulation, other than one which deals solely with the internal management of the commission, shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; and

"2. Designate any officer, agent, or employee of the commission to be an investigator or watchman and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

"15.3—Tax Exemptions. The commission, its property, functions, and activities shall be exempt from taxation by or under the authority of any of the signatory parties or any political subdivision thereof; provided that in lieu of property taxes the commission, as to its specific projects, shall make payments to local taxing districts in annual amounts which shall equal the taxes lawfully assessed upon property for the tax year next prior to its acquisition by the commission for a period of ten years. The nature and amount of such payment shall be reviewed by the commission at the end of ten years, and from time to time thereafter, upon reasonable notice and opportunity to be heard to the affected taxing district, and the payments may be thereupon terminated or continued in such reasonable amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdiction which are attributable to the project.

"15.4—Meetings; Public Hearing; Records, Minutes.

"(a) All meetings of the commission shall be open to the public.

"(b) The commission shall conduct at least one public hearing in each state prior to the adoption of the initial comprehensive plan. In all other cases wherein this compact requires a public hearing, such hearing shall be held upon not less than twenty days' public notice given by posting at the

offices of the commission, and published at least once in a newspaper or newspapers of general circulation in the area or areas affected. The commission shall also provide forthwith for distribution of such notice to the press and by the mailing of a copy thereof to any person who shall request such notices.

"(c) The minutes of the commission shall be a public record open to inspection at its offices during regular business hours.

"15.5—Officers Generally.

"(a) The officers of the commission shall consist of an executive director and such additional officers, deputies, and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed or dismissed by the executive director under such rules of procedure as the commission may establish.

"(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious, or residence test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be immediately dismissed.

"15.6—Oath of Office. An oath of office in such form as the commission shall prescribe shall be taken, subscribed, and filed with the commission by the executive director and by each officer appointed by him not later than fifteen days after the appointment.

"15.7—Bond. Each officer shall give such bond and in such form and amount as the commission may require, for which the commission shall pay the premium.

"15.8—Prohibited Activities.

"(a) No commissioner, officer or employee shall:

"1. Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the commission is a party;

"2. Solicit or accept money or any other thing of value in addition to the compensation or expense paid him by the commission for services performed within the scope of his official duties;

"3. Offer money or any thing of value for or in consideration of obtaining an appointment, promotion, or privilege in his employment with the commission.

"(b) Any officer or employee who willfully violates any of the provisions of this section shall forfeit his office or employment.

"(c) Any contract or agreement knowingly made in contravention of this section is void.

"(d) Officers and employees of the commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by Federal law and the law of the signatory state in which such misconduct occurs.

"**15.9—Purchasing.** Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars, and contracts for the purchase of services, supplies, equipment, and materials when the expenditure required exceeds five thousand dollars shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least thirty days before bids are received and in at least two newspapers of general circulation in the basin. The commission may reject any and all bids and readvertise in its discretion. If after rejecting bids the commission determines and resolves that in its opinion the supplies, equipment, and materials may be purchased at a lower price in the open market, the commission may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment, and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The commission shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice, and publication are not required by this section. The commission may suspend and waive the provisions of this section requiring competitive bids whenever:

"1. The purchase is to be made from or the contract to be made with the Federal or any state government or agency or political subdivision thereof or pursuant to any open and bulk purchase contract of any of them;

"2. The public exigency requires the immediate delivery of the articles or performance of the service;

"3. Only one source of supply is available;

"4. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; or

"5. Services are to be provided of a specialized or professional nature.

"**15.10—Insurance.** The commission may self-insure or purchase insurance and pay the premium therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the commission may determine, subject to the requirements of any agreement arising out of the issuance of bonds by the commission.

"**15.11—Annual Independent Audit.**

"(a) As soon as practical after the closing of the fiscal year an audit shall be made of the financial accounts of the commission. The audit shall be made by qualified certified public accountants selected by the commission, who have no personal interest direct or indirect in the financial affairs of the commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the commission

may direct. Copies of the report shall be distributed to each commissioner and shall be made available for public distribution.

"(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files, and accounts and all other papers, things, or property of the commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files, and all other papers, things, or property belonging to or in use by the commission and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

"(c) The financial transactions of the commission shall be subject to audit by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the commission are kept.

"(d) Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the commission or to the authorized officers of any signatory party or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things, or property as may be requested shall forfeit his office.

"15.12—Reports. The commission shall make and publish an annual report to the legislative bodies of the signatory parties and to the public reporting on its programs, operations, and finances. It may also prepare, publish, and distribute such other public reports and informational material as it may deem necessary or desirable.

"15.13—Grants, Loans, or Payments by States or Political Subdivisions.

"(a) Any or all of the signatory parties or any political subdivisions thereof may:

"1. Appropriate to the commission such funds as may be necessary to pay preliminary expenses such as the expenses incurred in the making of borings, and other studies of subsurface conditions, in the preparation of contracts for the sale of water and in the preparation of detailed plans and estimates required for the financing of a project;

"2. Advance to the commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and management of or construction by the commission of any facility or project;

"3. Make payments to the commission for benefits received or to be received from the operation of any of the projects or facilities of the commission.

"(b) Any funds which may be loaned to the commission either by a signatory party or a political subdivision thereof shall be repaid by the commission through the issuance of bonds or out of other income of the commission, such repayment to be made within such period and upon such terms as may be agreed upon between the commission and the signatory

party or political subdivision making the loan.

"15.14—Condemnation Proceedings.

"(a) The commission shall have the power to acquire by condemnation the fee or any lesser interest in lands, lands lying under water, development rights in land, riparian rights, water rights, waters and other real or personal property within the basin for any project or facility authorized pursuant to this compact. This grant of power of eminent domain includes but is not limited to the power to condemn for the purposes of this compact any property already devoted to a public use, by whomsoever owned or held, other than property of a signatory party. Any condemnation of any property or franchise owned or used by a municipal or privately owned public utility, unless the affected public utility facility is to be relocated or replaced, shall be subject to the authority of such state board, commission, or other body as may have regulatory jurisdiction over such public utility.

"(b) The power of condemnation referred to in subsection (a) shall be exercised in accordance with the provisions of the state condemnation law in force in the signatory state in which the property is located. If there is no applicable state condemnation law, the power of condemnation shall be exercised in accordance with the provisions of Federal condemnation law.

"(c) Any award or compensation for the taking of property pursuant to this article shall be paid by the commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

"15.15.—Conveyance of Lands and Relocation of Public Facilities.

"(a) The respective officers, agencies, departments, commissions, or bodies having jurisdiction and control over real and personal property owned by the signatory parties are authorized and empowered to transfer and convey in accordance with the laws of the respective parties to the commission any such property as may be necessary or convenient to the effectuation of the authorized purposes of the commission.

"(b) Each political subdivision of each of the signatory parties, notwithstanding any contrary provisions of law, is authorized and empowered to grant and convey to the commission, upon the commission's request, any real property or any interest therein owned by such political subdivision including lands lying under water and lands already devoted to public use which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

"(c) Any highway, public utility, or other public facility which will be dislocated by reason of a project deemed necessary by the commission to effectuate the authorized purposes of this compact shall be relocated and the cost thereof shall be paid in accordance with the law of the state in which the facility is located; provided that the cost of such relocation payable by the commission shall not in any event exceed the expenditure required to serve the public convenience and necessity.

"15.16—Rights of Way. Permission is hereby granted to the commission to locate, construct, and maintain any aqueducts, lines, pipes, conduits, and auxiliary facilities authorized to be acquired, constructed, owned, operated,

or maintained by the commission in, over, under, or across any streets and highways now or hereafter owned, opened, or dedicated to or for public use, subject to such reasonable conditions as the highway department of the signatory party may require.

"**15.17—Penalty.** Any person, association, or corporation who violates or attempts or conspires to violate any provisions of this compact or any rule, regulation, or order of the commission duly made, promulgated, or issued pursuant to the compact in addition to any other remedy, penalty, or consequence provided by law shall be punishable as may be provided by statute of any of the signatory parties within which the violation is committed; provided that in the absence of such provision any such person, association, or corporation shall be liable to a penalty of not less than $50 nor more than $1,000 for each such violation to be fixed by the court which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense each day of such violation, attempt, or conspiracy shall constitute a separate offense.

"**15.18—Tort Liability.** The commission shall be responsible for claims arising out of the negligent acts or omissions of its officers, agents, and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents, and employees of the government of the United States.

"**15.19—Effect on Riparian Rights.** Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective signatory parties relating to riparian rights.

"**15.20—Amendments and Supplements.** Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

"**15.21—Construction and Severability.** The provisions of this compact and of agreements thereunder shall be severable and if any phrase, clause, sentence, or provision of the Susquehanna River Basin Compact or such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency, or person is held invalid, the constitutionality of the remainder of such compact or such agreement and the applicability thereof to any other signatory party, agency, person, or circumstance shall not be affected thereby. It is the legislative intent that the provisions of such compact, be reasonably and liberally construed.

"**15.22—Effective Date; Execution.** This compact shall become binding and effective thirty days after the enactment of concurring legislation by the Federal government, the states of Maryland and New York, and the Commonwealth of Pennsylvania. The compact shall be signed and sealed in five identical original copies by the respective chief executive of the signatory parties. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state

in which the filing is made, and one copy shall be filed and retained in the archives of the commission upon its organization." (84 Stat. 1509)

RESERVATIONS

Sec. 2. In the exercise of the powers reserved to the Congress, pursuant to section 1.4 of the compact, the consent to and participation in the compact by the United States is subject to the following conditions and reservations:

(a) [Commission shall not undertake any project other than a project using State funds only until plans have been submitted to Congress and project authorized by Congress.]—Notwithstanding any provision of the Susquehanna River Basin compact the Susquehanna River Basin Commission shall not undertake any project (as defined in such compact), other than a project for which State supplied funds only will be used, beyond the planning stage until—

(1) such commission has submitted to the Congress such complete plans and estimates for such project as may be necessary to make an engineering evaluation of such project including—

(A) where the project will serve more than one purpose, an allocation of costs among the purposes served and an estimate of the ratio of benefits to costs for each such purpose.

(B) an apportionment of costs among the beneficiaries of the project, including the portion of the costs to be borne by the Federal Government and by State and local governments, and

(C) a proposal for financing the project, including the terms of any proposed bonds or other evidences of indebtedness to be used for such purpose, and

(2) such project has been authorized by Act of Congress: *Provided,* That when a project has been authorized by Congress, such additional or changed uses of storage therein as the commission may desire shall require project reauthorization, with reallocation of project costs to all project purposes served.

(b) [Restriction on imposition of charges for water withdrawals or diversions.]—No provision of section 3.9 of the compact shall be deemed to authorize the commission to impose any charge for water withdrawals or diversions from the basin if such withdrawals or diversions could lawfully have been made without charge on the effective date of the compact or to impose any charges with respect to commercial navigation within the basin, jurisdiction over which is reserved to the Federal Government: *Provided,* That this paragraph shall be applicable to the extent not inconsistent with section 1.4 of this compact.

(c) [President's Executive powers not restricted in the event of a national emergency.]—Nothing contained in the compact shall be deemed to restrict the Executive powers of the President in the event of a national emergency.

(d) [President and Congress retain budgetary and appropriations authority with respect to Federal agencies.]—Nothing contained in the com-

pact shall be construed as impairing or in any manner affecting the applicability to all Federal funds budgeted and appropriated for use by the commission of such authority over budgetary and appropriation matters as the President and Congress may have with respect to agencies in the executive branch of the Federal Government.

(e) [Taxation of bonds.]—Except to the same extent that State bonds are or may continue to be free or exempt from Federal taxation under the internal revenue laws of the United States, nothing contained in the compact shall be construed as freeing or exempting from internal revenue taxation in any manner whatsoever any bonds issued by the commission, their transfer, or the income therefrom (including any profits made on the sale thereof).

(f) [United States not obligated to pay principal or interest on Commission bonds.]—Nothing contained in the compact shall be construed to obligate the United States legally or morally to pay the principal or interest on any bonds issued by the Susquehanna River Basin Commission.

(g) [Employees working on Commission projects shall be compensated according to standards determined by the Davis-Bacon Act.]—All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating of projects, buildings and works which are undertaken by the commission or are financially assisted by it, shall be paid wages at rates not less than those prevailing on similar construction in the locality so determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and every such employee shall receive compensation at a rate not less than one and one half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in any workweek, as the case may be. A provision stating the minimum wages thus determined and the requirement that overtime be paid as above provided shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project. The Secretary of Labor shall have, with respect to the administration and enforcement of labor standards specified in this provision, the supervisory, investigatory and other authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended, 50 U.S.C. 276(c)).

(h) [Non-discrimination requirement.]—The commission shall insure that there is no discrimination on the ground of race, color, religion, sex, or national origin in (1) the programs and activities of the commission, (2) the employment practices of the commission, and (3) the employment practices of parties entering into contracts with the commission, including construction contracts and contracts for private concession in connection with recreational facilities.

(i) [Contracts in excess of $10,000 subject to Walsh-Healey Act.]—Contracts for the manufacture or furnishing of materials, supplies, articles and equipment with the commission which are in excess of $10,000 shall

be subject to the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.).

(j) [Water pollution functions of United States not affected.]—Nothing contained in this Act or in the compact shall be construed as superseding or limiting the functions, under any other law, of the Secretary of the Interior or of any other officer or agent of the United States, relating to water pollution: *Provided,* That the exercise of such functions shall not limit the authority of the commission to control, prevent or abate water pollution.

(k) [Recreational concession provisions not applicable to facilities operated pursuant to other Federal laws.]—The provisions of section 8.4 of article 8 of the compact shall not be construed to apply to facilities operated pursuant to any other Federal law.

(l) [Commission not considered a federal agency under certain laws.]—For the purposes of the Federal Tort Claims Act, of June 25, 1948 (62 Stat. 982), as amended (28 U.S.C. ch. 171 and sections 1346(b) and 2401(b) and the Tucker Act of March 3, 1887 (24 Stat. 505), as amended (28 U.S.C. 1346(a) (2), 1402, 1491, 1496, 1501, 1503, 2411, 2412, 2501), and the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), as amended (5 U.S.C. 551-558, 701-706), and the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended (16 U.S.C. 791-823), the commission shall not be considered a Federal agency.

(m) [Employees of Commission are not employees of the United States.]—The officers and employees of the commission (other than the United States member, alternate United States member, and advisers, and personnel employed by the United States member under direct Federal appropriation) shall not be deemed to be, for any purpose, officers or employees of the United States or to become entitled at any time by reason of employment by the commission to any compensation or benefit payable or made available by the United States solely and directly to its officers or employees.

(n) [Authority of other Federal agencies not enlarged.]—Neither the compact nor this Act shall be deemed to enlarge the authority of any Federal agency other than the commission to participate in or to provide funds for projects or activities in the Susquehanna River Basin.

(o) [Original jurisdiction of U.S. district courts.]—Notwithstanding paragraph 7 of section 3.10 of the compact, the United States district courts shall have original jurisdiction of all cases or controversies arising under the compact and this Act, and any case or controversy so arising initiated in a State court shall be removable to the appropriate United States district court in the manner provided by section 1446 of title 28, United States Code. Nothing contained in the compact or elsewhere in this Act shall be construed as a waiver by the United States of its immunity from suit.

(p) [Right to amend or repeal reserved—Disclosure of information]—The right to alter, amend, or repeal this Act is hereby expressly reserved. The right is hereby reserved to the Congress or any of its standing committees to require the disclosure and furnishing of such information and data by the Susquehanna River Basin Commission as is deemed appropriate

by the Congress or any such committee.

(q) [Federal member may be paid compensation by U.S.]—The provisions of sections 2.4 and 2.6 of article 2 of the compact notwithstanding, the member and alternate member appointed by the President and adviser there referred to may be paid compensation by the United States, such compensation to be fixed by the President at the rates which he shall deem to prevail in respect to comparable officers in the executive branch.

(r) [Constitutional authority and legislative jurisdiction of U.S. over area and waters not affected—Commission to serve as principal coordinating agency for Basin—Federal agency powers not to conflict with comprehensive plan—President may modify comprehensive plan in national interest—Federal project proposals to be submitted to Commission—Concurrence of Federal member.]—1. Nothing contained in this compact or in this Act shall impair, affect, or extend the constitutional authority of the United States.

2. Nothing contained in this compact or in this Act and no action of the commission shall supersede, impair, affect, compel, or prevent the exercise of any of the powers, rights, functions, or jurisdiction of the United States under other existing or future legislation in or over the area or waters which are the subject of the compact, including projects of the commission: *Provided,* That—

(i) The commission shall serve as the principal agency for the coordination of Federal, State, interstate, local, and nongovernmental plans for water and related land resources in the Susquehanna River Basin.

(ii) Except as provided in reservation (j), whenever a comprehensive plan, or any part or revision thereof, has been adopted with the concurrence of the member appointed by the President, the exercise of any powers conferred by law on any officer, agency, or instrumentality of the United States with regard to water and related land resources in the Susquehanna River Basin shall not substantially conflict with any such portion of such comprehensive plan and the provisions of section 3.10 and article 12 of the compact shall be applicable to the extent necessary to avoid such substantial conflict: *Provided further,* That whenever the President shall find and determine that the national interest so requires, he may suspend, modify, or delete any provision of the comprehensive plan to the extent necessary to permit action by the affected agency or officer in accord with the national interest. Such action shall be taken by executive order in which such finding and determination shall be set forth.

(iii) To insure consideration by Congress or any committee thereof of the commission's views, proposals for Federal projects which come within one or more of the classes requiring commission review under section 3.10 of the compact shall be submitted to the commission for review and recommendation for a period of ninety days or such longer time as may be requested by the commission with the concuring vote of the member appointed by the President; and the recommendations and views of the commission thereon, if any, shall be included in any report submitted by the sponsoring Federal agency to the Congress or to any committee thereof in

connection with any request for authorization or appropriations therefor.

3. For the purposes of paragraph 2(ii) hereof, concurrence by the member appointed by the President shall be presumed unless within sixty days after notice to him of adoption of the comprehensive plan, or any part or revision thereof, he shall file with the commission notice of (i) no objection, or (ii) nonconcurrence. Each concurrence of the member appointed by the President in the adoption of the comprehensive plan or any part or revision thereof may be withdrawn by notice filed with the commission at any time between the first and sixtieth day of the sixth year after the initial adoption of the comprehensive plan and of every sixth year thereafter.

(s) [U.S. ceases to be a party if Article 1.4 declared unconstitutional or invalid.]—In the event that any phrase, clause, sentence or provision of section 1.4 of article 1 of the compact, is declared to be unconstitutional under the constitution of any of the signatory parties, or the applicability thereof to any signatory party, agency or person is held invalid by a court of last resort of competent jurisdiction, the United States shall cease to be a party to the compact: *Provided,* That the President may continue United States participation in the activities of the commission to the extent that he deems necessary and proper to protect the national interest.

(t) [All inconsistent Acts amended—Commission cannot affect Federal law.]—(1) All Acts or parts of Acts inconsistent with the provisions of this Act are hereby amended for the purpose of this Act to the extent necessary to carry out the provisions of this Act.

(2) No action of the commission shall have the effect of repealing, modifying, or amending any Federal Law.

(u) [Federal member to be appointed by President.]—Notwithstanding the provisions of section 2.2 and 2.3 of the compact, the Federal member of the commission and his alternate shall be appointed by the President of the United States and shall serve at the pleasure of the President.

(v) [Technical services furnished by U.S. to extent agencies agree or President directs—Administrative services or facilities furnished to extent President directs.]—Notwithstanding the provisions of section 12.5 or any other provision of the compact, the furnishing of technical services to the commission by agencies of the executive branch of the Government of the United States is pledged only to the extent that the respective agencies shall from time to time agree thereto or to the extent that the President may from time to time direct such agencies to perform such services for the commission. Nothing in the compact shall be deemed to require the United States to furnish administrative services or facilities for carrying out functions of the commission except to the extent that the President may direct.

(w) [Functions and jurisdiction of Federal independent regulatory agencies not affected—Commission action shall not conflict with licenses and permits.]—Nothing contained in this Act or in the compact shall supersede, impair, affect, compel, or prevent the exercise of any of the powers, rights, functions, or jurisdiction of the Federal Power Commission, Federal Communications Commission, Atomic Energy Commission, Inter-

state Commerce Commission, or other such Federal independent regulatory agency under existing or future legislation. Accordingly, no action of the Susquehanna River Basin Commission shall conflict with any of the terms or conditions of any license or permit granted or issued by the aforementioned Federal agencies. This reservation shall not be construed as a basis for noncompliance with the requirements of the compact or this Act; nor shall it be construed to permit use of waters of the Susquehanna River Basin or to endanger their quality without approval pursuant to the compact. (84 Stat. 1537)

EFFECTUATION

Sec. 3. [Cooperation of Executive departments and agencies—Authorization of appropriations for Federal member.]—(a) The President is authorized to take such action as may be necessary and proper, in his discretion, to effectuate the compact and the initial organization and operation of the commission thereunder.

(b) Executive departments and other agencies of the executive branch of the Federal Government shall cooperate with and furnish appropriate assistance to the United States member. Such assistance shall include the furnishing of services and facilities and may include the detailing of personnel to the United States member. Appropriations are hereby authorized as necessary for the support of the United States member and his office, including appropriations for the employment of personnel by the United States member. (84 Stat. 1541)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1079, Public Law 91-575 in the 91st Congress. Reported in House from Judiciary; H.R. Rept. 91-1643. Reported in Senate from Judiciary; S. Rept. No. 91-1333. Passed Senate October 14, 1970. Passed House December 7, 1970.

PICK-SLOAN MISSOURI BASIN PROGRAM

An act to designate the comprehensive Missouri River Basin development program as the Pick-Sloan Missouri Basin program. (Act of December 24, 1970, Public Law 91-576, 84 Stat. 1541)

[Designation of Pick-Sloan Missouri Basin program.]—The comprehensive program of flood control, navigation improvement, and development for the Missouri River Basin, which arose out of the coordination of the multiple-purpose plans recommended in the report of the Corps of Engineers, United States Army, contained in House Document Numbered 475, Seventy-eighth Congress, and in the report of the Bureau of Reclamation, Department of the Interior, contained in Senate Document Numbered 191, Seventy-eighth Congress, shall hereafter be known as the Pick-Sloan Missouri Basin program. Any law, regulation, document, or record of the United States in which such program is designated or referred to under the name of the Missouri River Basin development program, or under any other name, shall be held and considered to refer to such program under and by the name of the Pick-Sloan Missouri Basin program. (84 Stat. 1541)

Explanatory Notes

Not codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1100, Public Law 91-576 in the 91st Congress. Reported in Senate from Public Works May 21, 1970; S. Rept. No. 91-891. Passed Senate May 25, 1970. Reported in House from Public Works December 9, 1970; H.R. Rept. No. 91-1710. Passed House December 10, 1970.

GEOTHERMAL STEAM ACT OF 1970

An act to authorize the Secretary of the Interior to make disposition of geothermal steam and associated geothermal resources, and for other purposes. (Act of December 24, 1970, Public Law 91-581, 84 Stat. 1566)

[Sec. 1. Short title.]—This Act may be cited as the "Geothermal Steam Act of 1970". (84 Stat. 1566; 30 U.S.C. § 1001 note)

Sec. 2. [Definitions.]—As used in this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "geothermal lease" means a lease issued under authority of this Act;

(c) "geothermal steam and associated geothermal resources" means (i) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (ii) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or other associated energy found in geothermal formations; and (iv) any byproduct derived from them;

(d) "byproduct" means any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(e) "known geothermal resources area" means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose. (84 Stat. 1566; 30 U.S.C. § 1001)

Sec. 3. [Lands for which leases may be issued.]—Subject to the provisions of section 15 of this Act, the Secretary of the Interior may issue leases for the development and utilization of geothermal steam and associated geothermal resources (1) in lands administered by him, including public, withdrawn, and acquired lands, (2) in any national forest or other lands administered by the Department of Agriculture through the Forest Service, including public, withdrawn, and acquired lands, and (3) in lands which have been conveyed by the United States subject to a reservation to the United States of the geothermal steam and associated geothermal resources therein. (84 Stat. 1566; 30 U.S.C. § 1002)

Sec. 4. [Lease to highest bidder in competitive bidding—Limitations.]—If lands to be leased under this Act are within any known geothermal resources area, they shall be leased to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. If the lands to be leased are not within any known geothermal

resources area, the qualified person first making application for the lease shall be entitled to a lease of such lands without competitive bidding. Notwithstanding the foregoing, at any time within one hundred and eighty days following the effective date of this Act:

(a) with respect to all lands which were on September 7, 1965, subject to valid leases or permits issued under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or under the Mineral Leasing Act of Acquired Lands, as amended (30 U.S.C. 351, 358), or to existing mining claims located on or prior to September 7, 1965, the lessees or permittees or claimants or their successors in interest who are qualified to hold geothermal leases shall have the right to convert such leases or permits or claims to geothermal leases covering the same lands;

(b) where there are conflicting claims, leases, or permits therefor embracing the same land, the person who first was issued a lease or permit, or who first recorded the mining claim shall be entitled to first consideration;

(c) with respect to all lands which were on September 7, 1965, the subject of applications for leases or permits under the above Acts, the applicants may convert their applications to applications for geothermal leases having priorities dating from the time of filing of such applications under such Acts;

(d) no person shall be permitted to convert mineral leases, permits, applications therefor, or mining claims for more than 10,240 acres; and

(e) the conversion of leases, permits, and mining claims and applications for leases and permits shall be accomplished in accordance with regulations prescribed by the Secretary. No right to conversion to a geothermal lease shall accrue to any person under this section unless such person shows to the reasonable satisfaction of the Secretary that substantial expenditures for the exploration, development, or production of geothermal steam have been made by the applicant who is seeking conversion, on the lands for which a lease is sought or on adjoining, adjacent, or nearby Federal or non-Federal lands.

(f) with respect to lands within any known geothermal resources area and which are subject to a right to conversion to a geothermal lease, such lands shall be leased by competitive bidding: *Provided,* That, the competitive geothermal lease shall be issued to the person owning the right to conversion to a geothermal lease if he makes payment of an amount equal to the highest bona fide bid for the competitive geothermal lease, plus the rental for the first year, within thirty days after he receives written notice from the Secretary of the amount of the highest bid. (84 Stat. 1566; 30 U.S.C. § 1003)

Sec. 5. [Provisions of leases.]—Geothermal leases shall provide for—

(a) a royalty of not less than 10 per centum or more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee;

(b) a royalty of not more than 5 per centum of the value of any by-

product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such mineral shall not exceed the maximum royalty applicable under that Act;

(c) payment in advance of an annual rental of not less than $1 per acre or fraction thereof for each year of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law: *Provided, however,* That whenever the Secretary discovers that the rental payment due under a lease is paid timely but the amount of the payment is deficient because of an error or other reason and the deficiency is nominal, as determined by the Secretary pursuant to regulations prescribed by him, he shall notify the lessee of the deficiency and such lease shall not automatically terminate unless the lessee fails to pay the deficiency within the period prescribed in the notice: *Provide further,* That, where any lease has been terminated automatically by operation of law under this section for failure to pay rental timely and it is shown to the satisfaction of the Secretary of the Interior that the failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence, he in his judgment may reinstate the lease if—

(1) a petition for reinstatement, together with the required rental, is filed with the Secretary of the Interior; and

(2) no valid lease has been issued affecting any of the lands in the terminated lease prior to the filing of the petition for reinstatement; and

(d) a minimum royalty of $2 per acre or fraction thereof in lieu of rental payable at the expiration of each lease year for each producing lease, commencing with the lease year beginning on or after the commencement of production in commercial quantities. For the purpose of determining royalties hereunder the value of any geothermal steam and byproduct used by the lessee and not sold and reasonably susceptible of sale shall be determined by the Secretary, who shall take into consideration the cost of exploration and production and the economic value of the resource in terms of its ultimate utilization. (84 Stat. 1567; 30 U.S.C. § 1004)

Sec. 6. [Renewal of leases—Conditions.]—(a) Geothermal leases shall be for a primary term of ten years. If geothermal steam is produced or utilized in commercial quantities within this term, such lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but such continuation shall not exceed an additional forty years.

(b) If, at the end of such forty years, steam is produced or utilized in commercial quantities and the lands are not needed for other purposes, the

lessee shall have a preferential right to a renewal of such lease for a second forty-year term in accordance with such terms and conditions as the Secretary deems appropriate.

(c) Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for five years and so long thereafter, but not more than thirty-five years, as geothermal steam is produced or utilized in commercial quantities. If, at the end of such extended term, steam is being produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of such lease for a second term in accordance with such terms and conditions as the Secretary deems appropriate.

(d) For purposes of subsection (a) of this section, production or utilization of geothermal steam in commercial quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal steam in commercial quantities and a bona fide sale of such geothermal steam for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than fifteen years from the date of commencement of the primary term of the lease.

(e) Leases which have extended by reasons of production, or which have produced geothermal steam, and have been determined by the Secretary to be incapable of further commercial production and utilization of geothermal steam may be further extended for a period of not more than five years from the date of such determination but only for so long as one or more valuable byproducts are produced in commercial quantities. If such byproducts are leasable under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C 181, et seq.), or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–358), and the leasehold is primarily valuable for the production thereof, the lessee shall be entitled to convert his geothermal lease to a mineral lease under, and subject to all the terms and conditions of, such appropriate Act upon application at any time before expiration of the lease extension by reason of byproduct production. The lessee shall be entitled to locate under the mining laws all minerals which are not leasable and which would constitute a byproduct if commercial production or utilization of geothermal steam continued. The lessee in order to acquire the rights herein granted him shall complete the location of mineral claims within ninety days after the termination of the lease for geothermal steam. Any such converted lease or the surface of any mining claim located for geothermal byproducts mineral affecting lands withdrawn or acquired in aid of a function of a Federal department or agency, including the Department of the Interior, shall be subject to such additional terms and conditions as may be prescribed by such department or agency with respect to the additional operations or effects resulting from such conversion upon adequate utilization of the lands for the purpose for which they are administered.

(f) Minerals locatable under the mining laws of the United States in lands subject to a geothermal lease issued under the provisions of this Act which are not associated with the geothermal steam and associated geothermal resources of such lands as defined in section 2(c) herein shall be locatable under said mining laws in accordance with the principles of the Multiple Mineral Development Act (68 Stat. 708; found in 30 U.S.C. 521 et seq.). (84 Stat. 1568; 30 U.S.C. § 1005)

EXPLANATORY NOTE

Reference in the Text. The Multiple Mineral Development Act (Act of August 13, 1954, 68 Stat. 708, 30 U.S.C. § 521 *et seq.*), referred to in subsection (f) of the text, does not appear herein.

Sec. 7. [Limitation on acreage under lease.]—A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions. No person, association, or corporation, except as otherwise provided in this Act, shall take, hold, own, or control at one time,whether acquired directly from the Secretary under this Act or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding twenty thousand four hundred and eighty acres, including leases acquired under the provisions of section 4 of this Act.

At any time after fifteen years from the effective date of this Act the Secretary, after public hearings, may increase this maximum holding in any one State by regulation, not to exceed fifty-one thousand two hundred acres. (84 Stat. 1569; 30 U.S.C. § 1006)

Sec. 8. [Readjustment of terms, conditions, rents, and royalties.]—(a) The Secretary may readjust the terms and conditions, except as otherwise provided herein, of any geothermal lease issued under this Act at not less than ten-year intervals beginning ten years after the date the geothermal steam is produced, as determined by the Secretary. Each geothermal lease issued under this Act shall provide for such readjustement. The Secretary shall give notice of any proposed readjustment of terms and conditions, and, unless the lessee files with the Secretary objection to the proposed terms or relinquishes the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.

(b) The Secretary may readjust the rentals and royalties of any geothermal lease issued under this Act at not less than twenty-year intervals beginning thirty-five years after the date geothermal steam is produced, as determined by the Secretary. In the event of any such readjustment neither the rental nor royalty may be increased by more than 50 per centum over the rental or royalty paid during the preceding period, and in no event shall the royalty

payable exceed 22½ per centum. Each geothermal lease issue under this Act shall provide for such readjustment. The Secretary shall give notice of any proposed readjustment of rentals and royalties, and, unless the lessee files with the Secretary objection to the proposed rentals and royalties or relinquishes the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.

(c) Any readjustment of the terms and conditions as to use, protection, or restoration of the surface of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency other than the Department of the Interior may be made only upon notice to, and with the approval of, such department or agency. (84 Stat. 1569; 30 U.S.C. § 1007)

Sec. 9. [Use of geothermal steam to produce valuable byproducts.]—If the production, use, or conversion of geothermal steam is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water for beneficial uses in accordance with applicable State water laws, the Secretary shall require substantial beneficial production or use thereof unless, in individual circumstances he modifies or waives this requirement in the interest of conservation of natural resources or for other reasons satisfactory to him. However, the production or use of such byproducts shall be subject to the rights of the holders of preexisting leases, claims, or permits covering the same land or the same minerals, if any. (84 Stat. 1570; 30 U.S.C. § 1008)

Sec. 10. [Lessee may relinquish rights under lease.]—The holder of any geothermal lease at any time may make and file in the appropriate land office a written relinquishment of all rights under such lease or of any legal subdivision of the area covered by such lease. Such relinquishment shall be effective as of the date of its filing. Thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his surety or bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment, or from the continued obligation, in accordance with the applicable lease terms and regulations, (1) to make payment of all accrued rentals and royalties, (2) to place all wells on the relinquished lands in condition for suspension or abandonment, and (3) to protect or restore substantially the surface and surface resources. (84 Stat. 1570; 30 U.S.C. § 1009)

Sec. 11. [Suspension of operations.]—The Secretary, upon application by the lessee, may authorize the lessee to suspend operations and production on a producing lease and he may, on his own motion, in the interest of conservation suspend operations on any lease but in either case he may extend the lease term for the period of any suspension, and he may waive, suspend, or reduce the rental or royalty required in such lease. (84 Stat. 1570; 30 U.S.C. § 1010)

Sec. 12. [Termination of lease.]—Leases may be terminated by the Secretary for any violation of the regulations or lease terms after thirty days notice provided that such violation is not corrected within the notice period, or in the event the violation is such that it cannot be corrected within the notice period then provided that lessee has not commenced in good faith within said notice period to correct such violation and thereafter to proceed diligently to correct such violation. Lessee shall be entitled to a hearing on the matter of such claimed violation or proposed termination of lease if request for a hearing is made to the Secretary within the thirty-day period after notice. The period for correction of violation or commencement to correct such violation of regulations or of lease terms, as aforesaid, shall be extended to thirty days after the Secretary's decision after such hearing if the Secretary shall find that a violation exists. (84 Stat. 1570; 30 U.S.C. § 1011)

Sec. 13. [Waiver, suspension, or reduction of rent or royalty.]—The Secretary may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources, if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms (84 Stat. 1570; 30 U.S.C. § 1012)

Sec. 14. [Use of surface land]—Subject to the other provisions of this Act, a lessee shall be entitled to use so much of the surface of the land covered by his geothermal lease as may be found by the Secretary to be necessary for the production, utilization, and conservation of geothermal resources. (84 Stat. 1571; 30 U.S.C. § 1013)

Sec. 15. [Issuance of geothermal leases—Conditions.]—(a) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of the Interior may be issued only under such terms and conditions as the Secretary may prescribe to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired.

(b) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired. Geothermal leases for lands to which section 24 of the Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued only with the consent of, and subject to, such terms and conditions as the Secretary of Energy may prescribe to insure adequate utilization of such lands for power and related purposes.

(c) Geothermal leases under this Act shall not be issued for lands administered in accordance with (1) the Act of August 25, 1916 (39 Stat. 535), as amended or supplemented, (2) for lands within a national recreation area, (3) for lands in a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction, (4) for tribally or individually owned Indian trust or restricted lands, within or

without the boundaries of Indian reservations. (84 Stat. 1571; 30 U.S.C. §1014)

EXPLANATORY NOTES

References in the Text. Section 24 of the Federal Power Act of 1920, as amended, (16 U.S.C. § 818), referred to in subsection (b) of the text, provides that lands for proposed power projects may, by application to the Federal Power Commission, be removed from entry, location, or other disposal under the laws of the United States. The 1920 Act appears in Volume I at page 262. The Act of August 25, 1916, as amended and supplemented (39 Stat. 535, 16 U.S.C § 1 *et seq.*), referred to in subsection (c) of the text, provides for the administration of the various national parks. The 1916 Act does not appear herein.

Transfer of Functions. "Secretary of Energy" was substituted for "Federal Power Commission" in subsection (b) pursuant to sections 301(b), 703, and 707 of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 565), which terminated the Federal Power Commission and transferred its functions, with certain exceptions, to the Secretary of Energy. Extracts from the 1977 Act appear in Volume IV in chronological order.

Sec. 16. [Citizenship requirements.]—Leases under this Act may be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States or of any State or the District of Columbia, or governmental units, including, without limitation, municipalities. (84 Stat. 1571; 30 U.S.C. § 1015)

Sec. 17. [Multiple use concept to be applied.]—Administration of this Act shall be under the principles of multiple use of lands and resources, and geothermal leases shall, insofar as feasible, allow for coexistence of other leases of the same lands for deposits of minerals under the laws applicable to them, for the location and production of claims under the mining laws, and for other uses of the areas covered by them. Operations under such other leases or for such other uses, however, shall not unreasonably interfere with or endanger operations under any lease issued pursuant to this Act, nor shall operations under leases so issued unreasonably interfere with or endanger operations under any lease, license, claim, or permit issued pursuant to the provisions of any other Act. (84 Stat. 1571; 30 U.S.C. § 1016)

Sec. 18. [Formation of cooperative or unit plan of development.]—For the purpose of properly conserving the natural resources of any geothermal pool, field, or like area, or any part thereof, lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever this is determined and certified by the Secretary to be necessary or advisable in the public interest. The Secretary may in his discretion and with the consent of the holders of leases involved, establish, alter, change, revoke, and make such regulations with reference to such leases in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure reasonable protection of the public interest. He may include in geothermal leases a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee

shall operate, which shall adequately protect the rights of all parties in interest, including the United States. Any such plan may, in the discretion of the Secretary, provide for vesting in the Secretary or any other person, committee, or Federal or State agency designated therein, authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control for the purposes of section 7 of this Act.

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

The Secretary is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of geothermal leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require or the interests of the United States may be best served thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under section 7 of this Act. (84 Stat. 1571; 30 U.S.C. §1017)

Sec. 19. [Data from Federal agencies—Limitations.]—Upon request of the Secretary, other Federal departments and agencies shall furnish him with any relevant data then in their possession or knowledge concerning or having bearing upon fair and adequate charges to be made for geothermal steam produced or to be produced for conversion to electric power or other purposes. Data given to any department or agency as confidential under law shall not be furnished in any fashion which identifies or tends to identify the business entity whose activities are the subject of such data or the person or persons who furnished such information. (84 Stat. 1572; 30 U.S.C. §1018)

Sec. 20. [Disposal of money received under Act.]—All moneys received under this Act from public lands under the jurisdiction of the Secretary shall be disposed of in the same manner as moneys received from the sale of public lands. Moneys received under this Act from other lands shall be disposed of in the same manner as other receipts from such lands. (84 Stat. 1572; 30 U.S.C. §1019)

Sec. 21. [Publication in Federal Register of geothermal resource areas—Court determination of meaning of Federal mineral reservation.]—(a) Within one hundred and twenty days after the effective date of this Act, the Secretary shall cause to be published in the Federal Register

a determination of all lands which were included within any known geothermal resources area on the effective date of the Act. He shall likewise publish in the Federal Register from time to time his determination of other known geothermal resources areas specifying in each case the date the lands were included in such area; and

(b) Geothermal resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under geothermal leases made pursuant to this Act. If the Secretary of the Interior finds that such development is imminent, or that production from a well heretofore drilled on such lands is imminent, he shall so report to the Attorney General, and the Attorney General is authorized and directed to institute an appropriate proceeding in the United States district court of the district in which such lands are located, to quiet the title of the United States in such resources, and if the court determines that the reservation of minerals to the United States in the lands involved included the geothermal resources, to enjoin their production otherwise than under the terms of this Act: *Provided,* That upon an authoritative judicial determination that Federal mineral reservation does not include geothermal steam and associated geothermal resources the duties of the Secretary of the Interior to report and of the Attorney General to institute proceedings, as hereinbefore set forth, shall cease. (84 Stat. 1572; 30 U.S.C. §1020)

Sec. 22. [State water laws.]—Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws. (84 Stat. 1573; 30 U.S.C. §1021)

Sec. 23. [Prevention of waste—Resources underlying Government owned lands.]—(a) All leases under this Act shall be subject to the condition that the lessee will, in conducting his exploration, development, and producing operations, use all reasonable precautions to prevent waste of geothermal steam and associated geothermal resources developed in the lands leased.

(b) Rights to develop and utilize geothermal steam and associated geothermal resources underlying lands owned by the United States may be acquired solely in accordance with the provisions of this Act. (84 Stat. 1573; 30 U.S.C. §1022)

Sec. 24. [Rules and regulations.]—The Secretary shall prescribe such rules and regulations as he may deem appropriate to carry out the provisions of this Act. Such regulations may include, without limitation, provisions for (a) the prevention of waste, (b) development and conservation of geothermal and other natural resources, (c) the protection of the public interest, (d) assignment, segregation, extension of terms, relinquishment of leases, development contracts, unitization, pooling, and drilling agreements, (e) compensatory royalty agreements, suspension of operations or production, and suspension or reduction of rentals or royalties, (f) the filing of surety bonds to assure compliance with the terms of the lease and to protect surface use and resources, (g) use of the surface by a lessee of the lands embraced in his lease, (h) the maintenance by the lessee of an active development pro-

gram, and (i) protection of water quality and other environmental qualities. (84 Stat. 1573; 30 U.S.C. §1023)

Sec. 25. [Application of other laws.]—As to any land subject to geothermal leasing under section 3 of this Act, all laws which either (a) provide for the disposal of land by patent or other form of conveyance or by grant or by operation of law subject to a reservation of any mineral or (b) prevent or restrict the disposal of such land because of the mineral character of the land, shall hereafter be deemed to embrace geothermal steam and associated geothermal resources as a substance which either must be reserved or must prevent or restrict the disposal of such land, as the case may be. This section shall not be construed to affect grants, patents, or other forms of conveyances made prior to the date of enactment of this Act. (84 Stat. 1573; 30 U.S.C. §1024)

Sec. 26. [Amendments.]—The first two clauses in section 11 of the Act of August 13, 1954 (68 Stat. 708, 716), are amended to read as follows:

"As used in this Act, 'mineral leasing laws' shall mean the Act of February 25, 1920 (41 Stat. 437); the Act of April 17, 1926 (44 Stat. 301); the Act of February 7, 1927 (44 Stat. 1057); Geothermal Steam Act of 1970, and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts; 'Leasing Act minerals' shall mean all minerals which, upon the effective date of this Act, are provided in the mineral leasing laws to be disposed of thereunder and all geothermal steam and associated geothermal resources which, upon the effective date of the Geothermal Steam Act of 1970, are provided in that Act to be disposed of thereunder;". (84 Stat. 1573; 30 U.S.C. § 530)

EXPLANATORY NOTE

Reference in the Text. The Act of August 13, 1954 (68 Stat. 708), referred to in the text, amended the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands. The 1954 Act does not appear herein.

Sec. 27. [Reservation by United States—Conditions.]—The United States reserves the ownership of and the right to extract under such rules and regulations as the Secretary may prescribe oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under this Act in accordance with presently applicable laws; *Provided,* That whenever the right to extract oil, hydrocarbon gas, and helium from geothermal steam and associated geothermal resources produced from such lands is exercised pursuant to this section, it shall be exercised so as to cause no substantial interference with the production of geothermal steam and associated geothermal resources from such lands. (84 Stat. 1574; 30 U.S.C. §1025)

EXPLANATORY NOTE

References in the Text. The Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. § 351 *et seq.*), referred to in sections 4(a) and 6(e) of the text, does not appear herein. An extract from the Mineral Leasing Act of February 25, 1920 (30 U.S.C. §181 *et seq.*), referred to in sections 4(a), 5(b), 6(e), and 26 of the text, concerning receipts re-

ceived from permits and leases, appears in Volume I at page 249. The balance of the 1920 Act does not appear herein.

Legislative History. S. 368, Public Law 91-581 in the 91st Congress. Reported in Senate from Interior and Insular Affairs September 4, 1970; S. Rept. No. 91-1160. Passed Senate September 16, 1970. Reported in House from Interior and Insular Affairs September 30, 1970; H.R. Rept. No. 91-1544. Passed House, amended, October 5, 1970. Senate agrees to House amendments Nos. 7, 8, 9, and 10, agrees to House amendments Nos. 4 and 5 with an amendment and disagrees with House amendments Nos. 1, 2, 3, and 6, December 4, 1970. House recedes from its amendments Nos. 1, 2, and 3, concurs in Senate amendments to House amendments Nos. 4 and 5, and recedes from its amendment No. 6 and offers a further amendment, December 9, 1970. Senate agrees to House amendment December 10, 1970.

RIVER AND HARBOR AND FLOOD CONTROL ACTS OF 1970

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. (Act of December 31, 1970, Public Law 91-611, 84 Stat. 1818)

TITLE I—RIVERS AND HARBORS

* * * * *

Sec. 111. [Compensation for the taking of property.]—In all cases where real property shall be taken by the United States for the public use in connection with any improvement of rivers, harbors, canals, or waterways of the United States, and in all condemnation proceedings by the United States to acquire lands or easements for such improvements, the compensation to be paid for real property taken by the United States above the normal high water mark of navigable waters of the United States shall be the fair market value of such real property based upon all uses to which such real property may reasonably be put, including its highest and best use, any of which uses may be dependent upon access to or utilization of such navigable waters. In case of partial takings of real property, no depreciation in the value of any remaining real property shall be recognized and no compensation shall be paid for any damages to such remaining real property which result from loss of or reduction of access from such remaining real property to such navigable waters because of the taking of real property or the purposes for which such real property is taken. The compensation defined herein shall apply to all acquisitions of real property after the date of enactment of this Act, and to the determination of just compensation in any condemnation suit pending on the date of enactment hereof. (84 Stat. 1821; 33 U.S.C. §595a)

* * * * *

Sec. 122. [Project guidelines—Report to Congress.]—Not later than July 1, 1972, the Secretary of the Army, acting through the Chief of Engineers, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than ninety days after submission, promulgate guidelines designed to assure that possible adverse economic, social and environmental effects relating to any proposed project have been fully considered in developing such project, and that the final decisions on the project are made in the best over all public interest, taking into consideration the need for flood control, navigation and associated purposes, and the cost of eliminating or minimizing such adverse affects and the following:

(1) Air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, es-

thetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects and tax and property value losses;

(4) injurious displacement of people, businesses, and farms; and

(5) disruption of desirable community and regional growth. Such guidelines shall apply to all projects authorized in this Act and proposed projects after the issuance of such guidelines. (84 Stat. 1823)

* * * * *

Sec. 124. [Short title.]—Title I of this Act may be cited as the "River and Harbor Act of 1970". (84 Stat. 1824)

TITLE II—FLOOD CONTROL

* * * * *

Sec. 203. [Corps of Engineers to assist in western water resources plan.]—The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate and participate with concerned Federal, State, and local agencies in preparing the general plan for the development of the water resources of the western United States authorized by the Colorado River Basin Project Act (82 Stat. 885). (84 Stat. 1828; 43 U.S.C. §1511a)

* * * * *

EXPLANATORY NOTE

Reference in the Text. The Colorado River Basin Project Act (Act of September 30, 1968, Public Law 90-537), referred to in the text, appears in Volume IV in chronological order.

Sec. 209. [Additional criteria for benefit—cost analysis.]—It is the intent of Congress that the objectives of enhancing regional economic development, the quality of the total environment, including its protection and improvement, the well-being of the people of the United States, and the national economic development are the objectives to be included in federally financed water resource projects, and in the evaluation of benefits and cost attributable thereto, giving due consideration to the most feasible alternative means of accomplishing these objectives. (84 Stat. 1829; 42 U.S.C. §1962-2)

* * * * *

Sec. 222. [Road relocation and construction, Auburn Dam and Reservoir.]—The Secretary of the Interior in financing the relocation of the existing Placer County Road from Auburn to Forest-hill, California, as part of the construction of the Auburn Dam and Reservoir on the Auburn-Folsom South Unit of the Central Valley Project, California, may provide

for the cost of construction of a two-lane river level bridge across the North Fork of the American River with a substructure and deck truss capable of supporting a four-lane bridge. The Secretary may also provide for the cost of construction of a two-lane, all-weather paved road (including appropriate two-lane bridges) extending from Old United States Highway 40, near Weimar across the North Fork and Middle Fork of the American River to the Eldorado County Road near Spanish Dry Diggings, substantially in accordance with the report of the Secretary entitled 'Replacement Alternative Upstream Road System, Auburn Reservoir—June 1970'. (84 Stat. 1831; § 36, Act of March 7, 1974, 88 Stat. 22)

* * * * *

EXPLANATORY NOTE

1974 Amendment. Section 36 of the Water Resources Development Act of 1974 (Act of March 7, 1974, 88 Stat. 22) amended section 222 by adding the last sentence as it appears above. Extracts from the 1974 Act, including section 36, appear in Volume IV in chronological order.

Sec. 236. [Short title.]—Title II of this Act may be cited as the "Flood Control Act of 1970." (84 Stat. 1835)

EXPLANATORY NOTE

Not Codified. Sections 122, 124, 222 and 236 of the extracts that appear above are not codified in the U.S. Code.

Legislative History. H.R. 1977, Public Law 91-611. in the 91st Congress. Reported in House from Public Works; H.R. Rept. No. 91-1665. S. 4572 in the 91st Congress. Reported in Senate from Public Works; S. Rept. No. 91-1422. Passed House December 7, 1970. Passed Senate, amended, December 9, 1970. Conference report: H.R. Rept. No. 91-1782. House agrees to conference report December 18, 1970. Senate agrees to conference report December 19, 1970.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

[Extracts from] An act to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs. (Act of January 2, 1971, Public Law 91-646, 84 Stat. 1894)

[Sec. 1. Short title.]—This Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970". (84 Stat. 1894; 42 U.S.C. §4601 note)

TITLE I—GENERAL PROVISIONS

Sec. 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202(a) of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby. (84 Stat. 1894; 42 U.S.C. §4601)

NOTE OF OPINION

1. State agency

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Uniform Act) applies to acquisitions made by irrigation districts or other public agencies for construction of facilities financed under the Distribution Systems Loan Act. It is evident that a loan under the Distribution Systems Loan Act qualifies as Federal financial assistance within the meaning of the Uniform Act. Moreover, it is apparent from the overall scheme of the Distribution Systems Loan Act that loan recipients must be either irrigation districts, which have inherent taxing authority, or other public agencies which also enjoy the power to tax and, therefore, such loan recipients must be considered political subdivisions, bringing them within the definition of the term "State agency" in section 101(3) of the Uniform Act. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, June 28, 1971.

EFFECT UPON PROPERTY ACQUISITION

Sec. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act. (84 Stat. 1895; 42 U.S.C. §4602)

TITLE II—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF POLICY

Sec. 201. The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and

federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. (84 Stat. 1895; 42 U.S.C. §4621)

NOTE OF OPINION

1. Canal Act

In acquiring rights-of-way under the Canal Act, the Bureau of Reclamation must comply with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as the latter Act expressly applies to all real property acquisitions associated with Federal and federally-assisted programs and projects. Even though the Canal Act refers only to reservations of rights-of-ways, Congress has recognized that such reservations constitute an acquisition of land by enacting the Acts of September 2, 1964 (Public Law 88-561, 78 Stat. 808) and October 4, 1966 (Public Law 89-624, 80 Stat. 873) providing for the payment of just compensation for land taken under the Canal Act for projects initiated after January 1, 1961. Memorandum of Associate Solicitor Morthland to Commissioner, July 15, 1971.

MOVING AND RELATED EXPENSES

Sec. 202. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar

business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. (84 Stat. 1895; 42 U.S.C. §4622)

REPLACEMENT HOUSING FOR HOMEOWNER

Sec. 203. (a) (1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the

Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (84 Stat. 1896; 42 U.S.C. §4623)

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

Sec. 204. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses decribed in section 203(a) (1) (C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment. (84 Stat. 1897; 42 U.S.C. §4624)

RELOCATION ASSISTANCE ADVISORY SERVICES

Sec. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum

extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs. (84 Stat. 1897; 42 U.S.C. §4625)

NOTE OF OPINION

1. Timing

The responsibilities of the Bureau of Reclamation under section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act to provide a relocation assistance advisory program in connection with the construction of the Initial Stage of the Oahe Unit need not be discharged at one time with respect to all those who eventually will be displaced by the project. *United Family Farmers, Inc. v. Kleppe,* 418 F. Supp. 591 (1976), affirmed on other grounds, 552 F.2d 823 (8th Cir. 1977).

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

Sec. 206. (a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot other-

wise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c) (3), is available to such person. (84 Stat. 1898; 42 U.S.C. §4626)

STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE (LOCAL COOPERATION)

Sec. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance. (84 Stat. 1898; 42 U.S.C. §4627)

STATE ACTING AS AGENT FOR FEDERAL PROGRAM

Sec. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project. (84 Stat. 1899; 42 U.S.C. §4628)

* * * * *

REQUIREMENTS FOR RELOCATION PAYMENTS AND ASSISTANCE OF FEDERALLY ASSISTED PROGRAM; ASSURANCES OF AVAILABILITY OF HOUSING

Sec. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced

persons in accordance with section 205(c) (3). (84 Stat. 1899; 42 U.S.C. §4630)

FEDERAL SHARE OF COSTS

Sec. 211. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305. (84 Stat. 1900; 42 U.S.C. §4631)

ADMINISTRATION—RELOCATION ASSISTANCE IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Sec. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such

State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. (84 Stat. 1900; 42 U.S.C. §4632)

REGULATIONS AND PROCEDURES

Sec. 213. (a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act. (84 Stat. 1900; 42 U.S.C. §4633)

ANNUAL REPORT

Sec. 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency

head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations. (84 Stat. 1901; 42 U.S.C. §4634)

PLANNING AND OTHER PRELIMINARY EXPENSES FOR ADDITIONAL HOUSING

Sec. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts. (84 Stat. 1901; 42 U.S.C. §4635)

PAYMENTS NOT TO BE CONSIDERED AS INCOME

Sec. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law. (84 Stat. 1902; 42 U.S.C. §4636)

DISPLACEMENT BY CODE ENFORCEMENT, REHABILITATION, AND DEMOLITION PROGRAMS RECEIVING FEDERAL ASSISTANCE

Sec. 217. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property. (84 Stat. 1902; 42 U.S.C. §4637)

TRANSFERS OF SURPLUS PROPERTY

Sec. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing. (84 Stat. 1902; 42 U.S.C. §4638)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Federal Property and Administrative Services Act (63 Stat. 377), referred to in the text, relating to surplus property, appear in Volume II at page 956.

* * * * *

REPEALS

Sec. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234). (84 Stat. 1903; 43 U.S.C. §1231)

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473). (84 Stat. 1903; 42 U.S.C. §2473)

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)). (84 Stat. 1903; 49 U.S.C. §1606)

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. 1465).

(6) Paragraphs (7)(b) (iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415 (8)), except the first sentence of paragraph (8). (84 Stat. 1903; 42 U.S.C. §1415)

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5–729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307). (84 Stat. 1903; 42 U.S.C. §3307)

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90–495). (84 Stat. 1903; 23 U.S.C. §501 note)

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section. (84 Stat. 1903; 42 U.S.C. §4621 note)

EXPLANATORY NOTE

Reference in the Text. The Act of May 29, 1958 (72 Stat. 152, 43 U.S.C. §1231), repealed by section 220(a) (1), appears in Volume II at page 1418. The remaining Acts repealed by section 220 do not appear herein.

EFFECTIVE DATE

Sec. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State. (84 Stat. 1904; 42 U.S.C. §4601 note)

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

Sec. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall

intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property. (84 Stat. 1904; 42 U.S.C. §4651)

EXPLANATORY NOTE

Reference in the Text. Section 1 of the Act of February 26, 1931 (46 Stat. 1421) referred to in paragraph (4) of the text, appears in Volume III at page 1974 and in the new Appendix in Supplement I.

BUILDINGS, STRUCTURES, AND IMPROVEMENTS

Sec. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection. (84 Stat. 1905; 42 U.S.C. §4652)

EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO UNITED STATES

Sec. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier. (84 Stat. 1906; 42 U.S.C. §4653)

LITIGATION EXPENSES

Sec. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal Agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgement is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgement or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. (84 Stat. 1906; 42 U.S.C. §4654)

EXPLANATORY NOTE

References in the Text. Sections 1346(a)(2) and 1491 of title 28, United States Code, referred to in subsection (c) of the text, appear in Volume III at pages 1950 and 1951, respectively and in the new Appendix in Supplement I.

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

Sec. 305. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project

which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304. (84 Stat. 1906; 42 U.S.C. §4655)

REPEALS

Sec. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section. (84 Stat. 1907; 42 U.S.C. §4651 note)

EXPLANATORY NOTES

References in the Text. None of the statutory provisions repealed by section 306 appear herein.

Legislative History. S. 1, Public Law 91-646 in the 91st Congress. Reported in Senate from Government Operations October 21, 1969; S. Rept. No. 91-488. Passed Senate October 27, 1969. Reported in House from Public Works December 2, 1970; H. R. Rept. No. 91-1656. Passed House, amended, December 7, 1970. Senate agrees to House amendment with amendments December 17, 1970. House agrees to Senate amendments to House amendment December 18, 1970.

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to activities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

NOTES OF OPINIONS

Canal Act 1
Displaced persons 2
Distribution system loans 3

1. Canal Act

In acquiring rights-of-way under the Canal Act, the Bureau of Reclamation must comply with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as the latter Act expressly applies to all real property acquisitions associated with Federal and federally-assisted programs and projects. Even though the Canal Act refers only to reservations of rights-of ways, Congress has recognized that such reservations constitute an acquisition of land by enacting the Acts of September 2, 1964 and October 4,1966, providing for the payment of just compensation for land taken under the Canal Act for projects initiated after January 1, 1961. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 15, 1971.

2. Displaced persons

Members of the Navajo and Hopi tribes forced to relocate after their tribes granted leases for coal mining rights to their lands to Peabody Coal Company, are not "displaced persons" as defined by section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 merely because the leases and mining plan were approved by the Department of Interior and the company subsequently sold strip-mined coal from the reservations to the Navajo generating station, in which the Bureau of Reclamation is a participant and which supplies power for the Mojave generating station which, allegedly, receives Bureau of Reclamation subsidies. The focus of section 101(6) is not on the degree of involvement by a fed-

eral agency or a program of such agency which results in the acquisition, but is instead on whether the person involved was displaced by governmental action either acquiring the property or issuing an order to vacate the property. *Austin v. Andrus,* 638 F.2d 113 (9th Cir. 1981).

3. Distribution system loans

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Uniform Act) applies to acquisitions made by irrigation districts or other public agencies for construction of facilities financed under the Distribution Systems Loan Act. It is evident that a loan under the Distribution Systems Loan Act qualifies as Federal financial assistance within the meaning of the Uniform Act. Moreover, it is apparent from the overall scheme of the Distribution Systems Loan Act that loan recipients must be either irrigation districts, which have inherent taxing authority, or other public agencies which also enjoy the power to tax and, therefore, such loan recipients must be considered political subdivisions, bringing them within the definition of the term "State agency" in section 101(3) of the Uniform Act. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, June 28, 1971.

ADDENDUM

NOTE OF OPINION

1. Condemnation

Section 301(8) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which specifies that the Federal Government need not initiate condemnation proceedings in order for the owner of property it acquires "to prove the fact of the taking of his real property," provides that once an agency initiates negotiations for property acquisition, a taking, as real as that under condemnation, has occurred. Thus, where the Bureau of Reclamation notifies a landowner of its intention to acquire a specific piece of land under the Act and indicates the price it will pay, the subsequent sale is the practical equivalent of a condemnation, even though the landowner accepts the indicated price and no judicial proceedings are instituted. *Mealey v. Orlich,* 120 Ariz. 321, 585 P.2d 1233 (1978).

PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1972

[Extracts from] An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian Regional Commission, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1972, and for other purposes. (Act of October 5, 1971, Public Law 92-134, 85 Stat. 365)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Solano Irrigation District Distribution System—Emergency repairs.]—*Provided further,* That of the amount herein appropriated not to exceed $200,000 shall be available to cover the costs of emergency repairs to the Solano Irrigation District Distribution System made prior to initial appropriation of funds for the rehabilitation and betterment of the distribution system, and shall be repaid by the district under the existing repayment contract. (85 Stat. 369)

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1972." (85 Stat. 376)

EXPLANATORY NOTES

Not Codified. The extracts from this Act that appear above 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. 10090, Public Law 92-134 in the 92d Congress. H.R Rept. No. 92-381. S. Rept. No. 92-327. H.R. Rept. No. 92-479 (conference report).

CONVEY LANDS TO CENTRAL DAKOTA NURSING HOME

An act to authorize and direct the Secretary of the Interior to convey certain property in the State of North Dakota to the Central Dakota Nursing Home. (Act of October 27, 1971, Private Law 92-31, 85 Stat. 846)

[Sec. 1. Conveyance authorized.]—The Secretary of the Interior is authorized and directed to convey, subject to the conditions hereinafter set forth in this Act, by quitclaim deed, to the Central Dakota Nursing Home, Jamestown, North Dakota, all right, title, and interest of the United States in and to the following described lands near Jamestown, North Dakota, together with all buildings and other improvements thereon:

* * * * *

(Legal description omitted, 85 Stat. 846)

* * * * *

Sec. 2. [Conditions.]—The conveyance authorized by this Act shall be made subject to the conditions that:

(1) The Central Dakota Nursing Home pay to the United States as consideration for the land authorized to be conveyed the amount of $5,500;

(2) All minerals, including oil and gas, in such lands authorized to be conveyed shall be reserved to the United States;

(3) The lands, including buildings and other improvements thereon, authorized to be conveyed shall be used by the Central Dakota Nursing Home solely for health care facilities, and in the event that such lands, including such buildings and improvements, cease to be used for that purpose, title thereto shall immediately revert, without payment of consideration, to the United States;

(4) The Central Dakota Nursing Home (including its assignees and successors) agrees to waive any and all claims, arising on or before the date of any conveyance pursuant to this Act, which such home might have against the United States as a result of blown silt or other causes resulting from or in connection with the construction, operation, or maintenance of the Jamestown Dam and Reservoir; and

(5) All expenses for surveys and the preparation and execution of legal documents necessary to carry out the provisions of this Act shall be paid by the Central Dakota Nursing Home. (85 Stat. 846)

Explanatory Notes

Background. The land involved was acquired in 1953 by the Bureau of Reclamation for use in connection with the Jamestown Dam. In 1960, the Department of the Interior

executed a fifty-year lease with the Central Dakota Nursing Home for the 22.1 acre tract which is conveyed by this Act. The report of the Senate Committee on Interior and Insular Affairs states that the Home "needs to expand its facilities, and title to the property would enhance the possibility of loans and gifts." S Rept. No. 228, 92d Cong., 1st Sess. 1 (1971).

Legislative History. S. 414, Private Law 92-31 in the 92d Congress. Reported in Senate from Interior and Insular Affairs June 21, 1971; S. Rept. No. 228. Passed Senate June 23, 1971. Passed House October 19, 1971. Companion bill H.R. 1763 reported in House from Interior and Insular Affairs September 29, 1971; H.R. Rept. No. 528.

FISH AND WILDLIFE OPERATION, KORTES UNIT

An act to authorize the Secretary of the Interior to modify the operation of the Kortes unit, Missouri River Basin project, Wyoming, for fishery conservation. (Act of October 29, 1971, Public Law 92-146, 85 Stat. 415)

[Sec. 1. Modification authorized.]—The Secretary of the Interior is hereby authorized and directed to modify the operation of the Kortes unit, Missouri River Basin project, Wyoming, authorized by the Act of December 22, 1944 (58 Stat. 887), to provide for the conservation of fishery resources. (85 Stat. 414)

Sec. 2. [Streamflow requirements.]—The Secretary shall operate the Kortes unit so as to maintain a minimum streamflow of five hundred cubic feet per second in the reach of the North Platte River between Kortes Dam and the normal headwaters of Pathfinder Reservoir: *Provided,* That sufficient water is available to maintain such minimum flow, without a resultant adverse effect on other water users who have valid rights to the use of this water: *Provided further,* That when sufficient water is not available to operate in this manner, water will be reserved for hydro-electric peaking power operations on a four-hour daily, five-day-week basis and any remaining water will be released for conservation of the fishery resources. (85 Stat. 415)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of December 22, 1944 (58 Stat. 887), referred to in the text, is the Flood Control Act of 1944. Section 9 of the Act, which appears in Volume II at page 806, authorized the comprehensive development of the Missouri River Basin.

Legislative History. S. 123, Public Law 92-146 in the 92d Congress. Reported in Senate from Interior and Insular Affairs July 29, 1971; S. Rept. No. 317. Passed Senate July 31, 1971. Passed House October, 18, 1971. Companion bill H.R. 1556 reported in House from Interior and Insural Affairs October 12, 1971; H.R. Rept. No. 555.

AMENDED CONTRACT WITH SAN ANGELO WATER SUPPLY CORPORATION

An act to authorize the Secretary of the Interior to revise a repayment contract with the San Angelo Water Supply Corporation, San Angelo project, Texas, and for other purposes. (Act of October 29, 1971, Public Law 92-147, 85 Stat. 415)

[Sec. 1. Repayment period extended.]—In order to assist the San Angelo Water Supply Corporation in overcoming hardships resulting from developing and financing an alternate water supply to overcome the effect of an unprecedented drought on the San Angelo project, the Secretary of the Interior is authorized to revise the repayment contract numbered 14–06–500–368 dated April 28, 1959, as amended, by extending the period authorized for repayment of reimbursable construction costs of the San Angelo project from forty years to fifty years. (85 Stat. 415)

Sec. 2. [Credit authorized.]—The Secretary is authorized to credit annually against the corporation's repayment obligation that portion of the year's joint operation and maintenance costs which, if the United States had continued to operate the project, would have been allocated to controlling floods and providing fish and wildlife benefits. (85 Stat. 415)

Sec. 3. [Use of available funds.]—The Secretary of the Interior may use any funds that are otherwise available to him to carry out the purposes of this Act. (85 Stat. 415)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, San Angelo Project. The San Angelo Project was authorized by the Act of August 16, 1957 (Public Law 85-152, 71 Stat. 372), which appears in Volume II at page 1354.

Legislative History. S. 1151, Public Law 92-147 in the 92d Congress. Reported in Senate from Interior and Insular Affairs September 28, 1971; S. Rept. No. 380. Passed Senate October 13, 1971. Passed House October 18, 1971. Companion bill H.R. 5500 reported in House from Interior and Insular Affairs October 12, 1971; H.R. Rept. No. 556.

CERTAIN STUDY COSTS NONREIMBURSABLE

An act to provide that the cost of certain investigations by the Bureau of Reclamation shall be nonreimbursable. (Act of October 29, 1971, Public Law 92-149, 85 Stat. 416)

[Sec. 1. Nonreimbursable costs.]—All costs heretofore or hereafter incurred from funds appropriated to the Bureau of Reclamation and costs transferred to it for (1) investigations and surveys of potential projects or divisions or units of projects which have not been authorized for construction prior to the date of this Act, (2) investigations and surveys of potential units or divisions of the Pick-Sloan Missouri River Basin program requiring amendatory authorization, under terms of Public Law 88–442 (78 Stat. 446), after the effective date of this Act, (3) studies of rehabilitation and betterment and water conservation requirements of existing projects relating to work for which repayment contracts have not been executed prior to the date of this Act, (4) studies relating to the comprehensive plan of development of the Missouri River Basin, and (5) general engineering and research studies shall be nonreimbursable. (85 Stat. 416)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Public Law 88-442 (78 Stat. 446), referred to in the text, appears in Volume III at page 1755.

Legislative History. S. 24, Public Law 92-149 in the 92d Congress. Reported in Senate from Interior and Insular Affairs July 29, 1971; S. Rept. No. 315. Passed Senate July 31, 1971. Reported in House from Interior and Insular Affairs October 12, 1971; H.R. Rept. No. 557. Passed House October 18, 1971.

CONVEYANCE TO SUCCESSORS OF MCNEIL

An act to provide for the conveyance of certain public lands in Wyoming to the occupants of the land. (Act of November 5, 1971, Private Law 92-34, 85 Stat. 848)

[Sec. 1. Conveyance authorized.]—The Secretary of the Interior is hereby authorized to convey to the successors in interest of Ferne M. McNeil all right, title, and interest of the United States, except right, title, and interest in deposits of oil and gas, in lands in resurvey lots 38C, 38D, and 38F (original survey southeast quarter southwest quarter, north half southeast quarter) section 25, township 52 north, range 103 west, sixth principal meridian, Park County, Wyoming, lying east and south of the Cody Canal. Such conveyance shall be made only upon application therefor within six months after the date of this Act, and upon payment of the fair market value of the land as of May 13, 1949, plus the administration costs of making the conveyance, as determined by the Secretary of the Interior, within one year after notification by the Secretary of the Interior of the amount due. In determining the fair market value of the land, the Secretary of the Interior shall not include any values added to the land by Ferne M. McNeil or her successors in interest or their heirs. Any conveyance made pursuant to this Act shall reserve to the United States all deposits of oil and gas in the land together with the right to mine and remove the same, under applicable laws and regulations established by the Secretary of the Interior. (85 Stat. 848)

Sec. 2. [Waiver and release.]—Acceptance of Ferne M. McNeil or her successors in interest of any conveyance made hereunder shall constitute a waiver and release by them of any and all claims against the United States arising out of the operation, maintenance, or construction of the Buffalo Bill Reservoir as now or hereafter authorized, including, without limitation, by reason of enumeration, claims for seepage, wave action, blowing silt, or increase in ground water level. (85 Stat. 848)

EXPLANATORY NOTE

Legislative History. S. 137, Private Law 92-34 in the 92d Congress. Reported in Senate from Interior and Insular Affairs June 21, 1971; S. Rept. No. 227. Passed Senate June 28, 1971. Passed House October 26, 1971. Companion bill H.R. 2082 reported in House from Interior and Insular Affairs September 29, 1971; H.R. Rept. No. 529.

AMEND SMALL RECLAMATION PROJECTS ACT

An act to amend the Small Reclamation Projects Act of 1956, as amended. (Act of November 24, 1971, Public Law 92-167, 85 Stat. 488)

[Sec. 1. Small Reclamation Projects Act amended.]—The Small Reclamation Projects Act of 1956 (70 Stat. 1044), as amended, is amended as follows:

(1) Subsection (d) of section 2 of such Act is amended to read as follows: "(d) The term 'project' shall mean (i) any complete irrigation project, or (ii) any multiple-purpose water resource project that is authorized or is eligible for authorization under the Federal reclamation laws, or (iii) any distinct unit of a project described in clauses (i) and (ii), or (iv) any project for the drainage of irrigated lands, without regard to whether such lands are irrigated with water supplies developed pursuant to the Federal reclamation laws, or (v) any project for the rehabilitation and betterment of a project or distinct unit described in clauses (i), (ii), (iii), and (iv): *Provided*, That the estimated total cost of the project described in clauses (i), (ii), (iii), (iv), or (v) does not exceed $15,000,000. Nothing contained in this Act shall preclude the making of more than one loan or grant, or combined loan or grant, to an organization so long as no two such loans or grants, or combinations thereof, are for the same project, as herein defined.". (85 Stat. 488; 43 U.S.C. §422b)

(2) The first sentence of section 4(e) of such Act is amended by deleting ", whether the proposal involves furnishing supplemental irrigation water for an existing irrigation project, whether the proposal involves rehabilitation of existing irrigation project works, and whether the proposed project is primarily for irrigation". (85 Stat. 488; 43 U.S.C. §422d)

(3) Paragraph (a) of section 5 of such Act is amended by deleting "$6,500,000 or" and inserting in lieu thereof "$10,000,000 or". (85 Stat. 488; 43 U.S.C. §422e)

(4) Section 5(b) (2) of such Act is amended to read as follows: "(2) one-half the costs of acquiring lands or interests therein to serve exclusively the purposes of fish and wildlife enhancement or public recreation, plus the costs of acquiring joint use lands and interests therein properly allocable to fish and wildlife enhancement and public recreation;". (85 Stat. 488; 43 U.S.C. §422e)

(5) At the end of subsection 5(b) (5), delete the word "projects" and the semicolon, and add the following: "projects: *Provided*, That the cost of constructing the project as used in this subsection shall be exclusive of the cost of lands and interests in land;". (85 Stat. 488; 43 U.S.C. § 422e)

(6) Subsection 5(c) (3) of such Act is amended to read as follows: "(3) in the case of any project involving an allocation to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhancement,

or public recreation, interest on the unamortized balance of an appropriate portion of the loan at a rate as determined in (2) above; ". (85 Stat. 488; 43 U.S.C. §422e)

(7) Section 10 of such Act is amended by deleting "$200,000,000" and inserting in lieu thereof "$300,000,000". (85 Stat. 488; 43 U.S.C. §422j)

(8) The Small Reclamation Projects Act of 1956 is amended by adding at the end thereof a new section 13 as follows:

"Sec. 13. A loan contract negotiated and executed pursuant to this Act may be amended or supplemented for the purpose of deferring repayment installments in accordance with the provisions of section 17(b) of the Reclamation Project Act of 1939, as amended (73 Stat. 584, 43 U.S.C. 485b-1)." (85 Stat. 488; 43 U.S.C. §422k-1)

EXPLANATORY NOTES

Subsequent Amendments. In addition to the amendments made by the Acts of June 5, 1957 and September 2, 1966, which appear in Volume II at page 1348 and Volume III at page 1882, respectively, and by this Act, the Small Reclamation Projects Act was further amended by the Acts of December 27, 1975 (Public Law 94-181, 89 Stat. 1049), September 4, 1980 (Public Law 96-336, 94 Stat. 1065), and October 12, 1982 (Public Law 97-293, 96 Stat. 1261), which appear in Volume IV in chronological order.

Editor's Note, Annotations. Annotations of opinions are found in Volume II at pages 1332, 1336, and 1338 and in Supplement I under "August 6, 1956—Small Reclamation Projects Act."

Legislative History. S. 1026, Public Law 92-167 in the 92d Congress. Reported in Senate from Interior and Insular Affairs July 29, 1971; S. Rept. No. 314. Passed Senate July 31, 1971. Passed House, amended, November 1, 1971. Senate agrees to House amendments November 11, 1971. Companion bill H.R. 7854 reported in House from Interior and Insular Affairs October 14, 1971; H.R. Rept. No. 571.

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in certain feasibility investigations.
(Act of December 15, 1971, Public Law 92-199, 85 Stat. 664)

[Sec. 1. Feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following potential water resources development projects:

(a) North Side Pumping Division Extension, Minidoka project, Jerome and Minidoka Counties, Idaho.

(b) Dickinson Unit, Pick-Sloan Missouri River Basin program, North Dakota.

(c) Upper John Day project, on the John Day River in Grant and Wheeler Counties, Oregon.

(d) A plan to rehabilitate the distribution system of the Red Bluff project, Texas.

(e) Rogue River Basin project, Grants Pass Division, Josephine and Jackson Counties, Oregon.

(f) Central Valley project, Delta Division, Montezuma Hills unit in southern Solano County, California.

(g) Gallup project in McKinley, Valencia, and San Juan Counties in New Mexico.

(h) Modification of the Seminoe Dam, Kendrick project, Wyoming.

(i) Butte Valley division, Klamath project in the Klamath River Basin, Klamath County, Oregon, and Siskiyou County, California.

(j) Billings Municipal Water Supply Unit, Yellowstone Division, Pick-Sloan Missouri River Basin program, Montana. (85 Stat. 664)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2248, Public Law 92-199 in the 92d Congress. Reported in Senate from Interior and Insular Affairs August 3, 1971; S. Rept. No. 339. Passed Senate August 5, 1971. Passed House, amended, November 1, 1971. Senate agrees to House amendments December 3, 1971. Companion bill H.R. 2299 reported in House from Interior and Insular Affairs October 14, 1971; H.R. Rept. No. 570.

WEATHER MODIFICATION REPORTING

An act to provide for the reporting of weather modification activities to the Federal Government. (Act of December 18, 1971, Public Law 92-205, 85 Stat. 735)

[Sec. 1. Definitions.]—As used in this Act—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, who is performing weather modification activities, except where acting solely as an employee, agent, or independent contractor of the Federal Government.

(3) The term "weather modification" means any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(4) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States. (85 Stat. 735; 15 U.S.C. §330)

Sec. 2. [Report required before weather-modification activity.]—No person may engage, or attempt to engage, in any weather modification activity in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt. (85 Stat. 736; 15 U.S.C. §330a)

Sec. 3. [Record of weather modification activities—Public disclosure—Limitations.]—(a) The Secretary shall maintain a record of weather modification activities, including attempts, which take place in the United States and shall publish summaries thereof from time to time as he determines.

(b) All reports, documents, and other information received by the Secretary under the provisions of this Act shall be made available to the public to the fullest practicable extent.

(c) In carrying out the provisions of this section, the Secretary shall not disclose any information referred to in section 1905 of title 18, United States Code, and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety. (85 Stat. 736; 15 U.S.C. §330b)

Sec. 4. [Authority of Secretary to obtain information—Penalty for noncompliance.]—(a) The Secretary may obtain from any person whose activ-

ities relate to weather modification by rule, subpena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping and furnishing of such reports and records, and may make such inspection of the books, records, and other writings and premises and property of any person as may be deemed necessary or appropriate by him to carry out the provisions of this Act, but this authority shall not be exercised to obtain any information with respect to which adequate and authoritative data are available from any Federal agency.

(b) In case of contumacy by, or refusal to obey a subpena served upon any person pursuant to this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (85 Stat. 736; 15 U.S.C. §330c)

Sec. 5. [Violation of reporting requirements—Penalty.]—Any person who knowingly and willfully violates section 2 of this Act, or any rule issued thereunder, shall upon conviction thereof be fined not more than $10,000. (85 Stat. 736; 15 U.S.C. §330d)

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 6893, Public Law 92-205 in the 92d Congress. Reported in House from Interstate and Foreign Commerce August 5, 1971; H.R. Rept. No. 458. Passed House September 28, 1971. Reported in Senate from Commerce December 2, 1971; S. Rept. No. 537. Passed Senate, amended, December 6, 1971. House agrees to Senate amendment December 9, 1971.

RIVER BASIN MONETARY AUTHORIZATION ACT OF 1971

[Extracts from] An act authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes. (Act of December 23, 1971, Public Law 92-222, 85 Stat. 798)

* * * * *

Sec.2. [Prevention of shoaling near pumping plant intake of Frazer-Wolf Point irrigation unit.]—The Chief of Engineers, under the direction of the Secretary of the Army, is hereby authorized to perform such work as may be required, including the construction of dikes, to prevent shoaling near the pumping plant intake of the Frazer-Wolf Point irrigation unit on the Fort Peck Indian Reservation, located on the north bank of the Missouri River about thirty miles downstream from the Fort Peck Dam, at an estimated cost of $335,000 subject to the provision that the Bureau of Indian Affairs, Department of the Interior, obtain all necessary lands, easements, and rights-of-way, and maintain the project after completion. (85 Stat. 798)

* * * * *

Sec. 4. [Flood Control Act of 1970 amended.]—Section 221 of the Flood Control Act of 1970 (84 Stat. 1824, 1831) is amended by striking the period at the end of subsection (f), substituting a comma therefor, and adding the following: "or to the assurances for future demands required by the Water Supply Act of 1958, as amended." (85 Stat. 799)

* * * * *

Sec. 14. [Short title.]—This Act may be cited as the "River Basin Monetary Authorization Act of 1971". (85 Stat. 802)

EXPLANATORY NOTES

Not Codified. The extracts from this act that appear above are not codified in the U.S. Code.

Legislative History. S. 2887, Public Law 92-222 in the 92d Congress. Reported in Senate from Public Works November 19, 1971; S. Rept. No. 506. Passed Senate November 23, 1971. Reported in House from Public Works November 30, 1971; H.R. Rept. No. 691. Passed House, amended, December 6, 1971. Senate agrees to House amendments December 9, 1971.

KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

An act to consent to the Kansas-Nebraska Big Blue River Compact. (Act of June 2, 1972, Public Law 92-308, 86 Stat. 193)

[Sec. 1. Consent of Congress.]—The Congress consents to the Kansas-Nebraska Big Blue River Compact which is substantially as follows:

"KANSAS-NEBRASKA BIG BLUE RIVER COMPACT

"PREAMBLE

"The State of Kansas and the State of Nebraska, acting through their duly authorized Compact representatives, Keith S. Krause for the State of Kansas and Dan S. Jones, Jr., for the State of Nebraska, after negotiations participated in by Elmo W. McClendon, appointed by the President as the representative of the United States of America, and in accordance with the consent to such negotiations granted by an Act of Congress of the United States of America, approved June 3, 1960, Public Law 489, 86th Congress, 2nd Session, have agreed that the major purposes of this Compact concerning the waters of the Big Blue River and its tributaries are:

"A. To promote interstate comity between the States of Nebraska and Kansas;

"B. To achieve an equitable apportionment of the waters of the Big Blue River Basin between the two States and to promote orderly development thereof; and

"C. To encourage continuation of the active pollution-abatement programs in each of the two States and to seek further reduction in both natural and man-made pollution of the waters of the Big Blue River Basin.

"To accomplish these purposes, the said States have agreed as set forth in the following Articles.

" 'ARTICLE I—DEFINITIONS

" 'As used in this Compact:

" '1.1 The term "State" shall mean either State signatory hereto, and it shall be construed to include any person, entity, or agency of either State who, by reason of official responsibility or by designation of the Governor of the State, is acting as an official representative of the State;

" '1.2 The term "Kansas-Nebraska Big Blue River Compact Administration," or the term "Administration," means the agency created by this Compact for the administration thereof;

" '1.3 The term "Big Blue River Basin" means all of the drainage basin of the Big Blue and Little Blue Rivers in Nebraska and Kansas downstream to the confluence of the Big Blue River with the Kansas River near Manhattan, Kansas;

" '1.4 The term "Big Blue River Basin in Nebraska" means all of the drainage basin of the Big Blue River in Nebraska and is exclusive of the drainage basin of the Little Blue River in Nebraska;

" '1.5 The term "minimum mean daily flow" means the minimum mean flow for any one calendar day;

" '1.6 The term "pollution" means contamination or other undesirable alteration of any of the physical, chemical, biological, radiological, or thermal properties of the waters of the basin, or the discharge into the waters of the basin of any liquid, gaseous, or solid substances that create or are likely to result in a nuisance, or that render or are likely to render the waters into which they are discharged harmful, detrimental, or injurious to public health, safety, or welfare, or that are harmful, detrimental or injurious to beneficial uses of the water;

" '1.7 The term "water project" means any physical structure or any man-made changes which affect the quantity or quality of natural water supplies or natural streamflows and which are designed to bring about greater beneficial use of the water resources of an area;

" '1.8 The term "natural flow" means that portion of the flow in a natural stream that consists of direct runoff from precipitation on the land surface, ground-water infiltration to the stream, return flows to the natural stream from municipal, agricultural, or other uses, and releases from storage for no designated beneficial use;

" '1.9 The term "inactive water appropriation" means a water right that is subject to cancellation or termination for non-use.

" 'ARTICLE II—DESCRIPTION OF THE BASIN

" '2.1 The Big Blue River, a tributary of the Kansas River, drains an area of 9,696 square miles in south central Nebraska and north central Kansas. About 75 percent of the Big Blue River Basin is in Nebraska, and the remainder is in Kansas. The Big Blue River and its principal tributary, the Little Blue River, join near Blue Rapids, Kansas. From there, the Big Blue River flows generally southward to join the Kansas River near Manhattan, Kansas, as shown on Exhibit A.

" '2.2 Much of the upper portion of the basin in Nebraska is underlain with sands and gravels that supply large quantities of water to irrigation wells. The lower portion of the basin in Nebraska and that portion of the basin in Kansas lack significant ground-water supplies except within the major stream valleys.

" 'ARTICLE III—ORGANIZATION OF COMPACT ADMINISTRATION

" '3.1 ADMINISTRATION AGENCY. There is hereby established an interstate administrative agency, to be known as the "Kansas-Nebraska Big Blue River Compact Administration," to administer the Compact.

" '3.2 ADMINISTRATION MEMBERSHIP. The Administration shall be composed of one ex officio member and one advisory member from each State, plus a Federal member to be appointed by the President if he so desires.

The ex officio member from each State shall be the official charged with the duty of administering the laws of his State pertaining to water rights. Said official shall designate a representative who may serve in his place at meetings of the Administration. All actions taken by the designated representative in the transaction of the business of the Administration shall be in the name of the official he represents and shall be binding on that official. The advisory member from each State may serve in any capacity within the Administration. He shall reside in the Big Blue River Basin portion of the State he represents.

" 'The Governor of each State shall appoint the advisory member from that State for a term of 4 years. This appointment shall be made within 90 days after the effective date of this Compact.

" '3.3 ADMINISTRATION GOVERNMENT. The Administration shall hold its first meeting within 120 days after the effective date of this Compact, and it shall meet at least annually thereafter. The Federal member, if one be designated, shall serve as Chairman, without vote. If no Federal representative is appointed, the Administration shall select a Chairman, in addition to such officers as may be provided for in the rules and regulations, to serve at the will of the Administration. A meeting quorum shall consist of the ex officio members from both States, or their designated representatives. Each State shall have but one vote, cast by the ex officio member or his representative. All actions must be approved by both ex officio members or their representatives. Minutes of each meeting shall be kept, and they shall be available for public inspection.

" '3.4 ADMINISTRATION POWERS AND DUTIES. The Administration shall have the power to adopt rules and regulations consistent with the provisions of this Compact, to enforce such rules and regulations, and to otherwise carry out its responsibilities. It may institute action in its own name in courts of competent jurisdiction to compel compliance with the provisions of this Compact and with the rules and regulations it adopts.

" 'The Administration is hereby authorized to employ the technical and clerical staff necessary to carry out its functions, and to maintain the office and appurtenances necessary to conduct its business. It may employ attorneys, engineers, or other consultants. It may purchase equipment and services necessary to its functions.

" 'The Administration shall publish an annual report including a review of its activities and financial status. It may also prepare and publish such other reports and publications as it deems necessary.

" 'In order to provide a sound basis for carrying out the apportionment provisions of this Compact, the Administration shall cause to be established such stream-gaging stations, ground-water observation wells, and other data-collection facilities as are necessary for administering this Compact; and it shall install such other equipment and collect such data therefrom, for a period of not less than 5 years, as are necessary or desirable for evaluating the effects of pumping of wells on the flows of the Big Blue and Little Blue Rivers at the Kansas-Nebraska State line. The well area to be considered is described in Article V, paragraph 5.2.

" 'The Administration shall have authority to accept funds from local, State, and Federal sources. It may enter into cooperative agreements and contribute funds to support such data-collection and analysis programs as are necessary for administration of the Compact.

" 'ARTICLE IV—RESPONSIBILITY OF EACH STATE

" '4.1 EXPENSES OF ADMINISTRATION. Each State and Federal member of the Administration shall receive such compensation and such reimbursement for travel and subsistence as are provided by the government he represents, and he shall be paid by that government.

" '4.2 BUDGET. Each year, the Administration shall prepare a properly documented budget covering the anticipated expenditures of the Administration for the following fiscal period. Each State shall make provision in its budget for funds to pay its share of the expenses of the Administration, which shall be divided equally between the States of Kansas and Nebraska. The Administration shall establish a fund to which each State shall contribute equally and from which the expenses of the Administration shall be paid.

" '4.3 RECORDS AND INFORMATION. The State of Kansas and the State of Nebraska shall cooperate with the Administration and furnish to it such records, information, plans, data, and assistance as may be reasonably available; and they shall keep the Administration advised of Federal activities in connection with planning, design, construction, operation, and maintenance of water-resource projects in the Big Blue River Basin.

" 'Any local, public, or private agency collecting water data or planning, designing, constructing, operating, or maintaining any water project or facility in the Big Blue River Basin shall keep the Administration advised of its investigations and of any proposed changes and additions to existing projects and facilities, and it shall submit plans for new projects to the Administration for review of those project aspects affecting surface-water flowage and quality.

" 'ARTICLE V—APPORTIONMENT OF WATERS OF THE BIG BLUE RIVER BASIN

" '5.1 PRINCIPLES OF APPORTIONMENT. The physical and other conditions peculiar to the Big Blue River Basin constitute the basis for this apportionment, and neither of the signatory States hereby, nor the Congress of the United States by its consent hereto, concedes that this apportionment establishes any general principle with respect to any other interstate stream.

" 'The States of Kansas and Nebraska subscribe to the principle of including storage capacity for low-flow regulation in reservoirs constructed by the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers, and to the principle of such administration as is required to assure that water released from storage for low-flow regulation shall remain available in the stream to accomplish its intended purpose.

" '5.2 NEBRASKA APPORTIONMENT.—The State of Nebraska shall have free and unrestricted use of the waters of the Little Blue and Big Blue

River Basins in Nebraska, such use to be in accordance with the laws of the State of Nebraska, subject to the limitations set forth below.

" '(a) Water appropriations of record in the Little Blue and Big Blue River Basins in Nebraska on November 1, 1968, that were then inactive shall be cancelled by due process of laws in effect in that State.

" '(b) During the period, May 1-September 30 the State of Nebraska shall regulate diversions from natural flow of Streams in the Little Blue and Big Blue River Basins by water appropriators junior to November 1, 1968, in order to maintain minimum mean daily flows at the state-line gaging stations (which are now located at Fairbury and Barneston, respectively, but which may be relocated at such other places as may be designated state-line gaging stations by the Administration) during each month as follows:

Little Blue River		Big Blue River	
May	45 cfs	May	45 cfs
June	45 cfs	June	45 cfs
July	75 cfs	July	80 cfs
August	80 cfs	August	90 cfs
September	60 cfs	September	65 cfs

" 'When such action is necessary to maintain the above schedule of flows, the State of Nebraska shall;

" '(1) Limit diversions by natural-flow appropriators in Nebraska in accordance with their water appropriations;

" '(2) Close, in reverse order of priority, natural-flow appropriations with priority dates subsequent to November 1, 1968, including rights to store water in the conservation-storage zones of reservoirs;

" '(3) Enjoin all persons not holding valid natural-flow appropriations from taking water during periods when the exercise of junior natural-flow appropriations is being restricted;

" '(4) Regulate, in the same manner that diversion of natural flows is regulated, withdrawals of water from irrigation wells installed after November 1, 1968, except equivalent wells drilled to replace wells installed before that date, in the alluvium and valley side terrace deposits within one mile from the thread of the river and between the mouth of Walnut Creek and the Kansas-Nebraska State line on the Little Blue River and between the mouth of Turkey Creek and the Kansas-Nebraska State line on the Big Blue River (as delineated on Exhibits A and B of Supplement No. 1 to the Report of the Engineering Committee) provided that, if the regulation of such wells fails to yield any measurable increases in flows at the state-line gaging stations as determined by the investigations to be undertaken under Article III, paragraph 3.4, the regulation of such wells shall be discontinued. Determination of the effect on streamflow of the pumping of such wells shall rest with the administration.

" 'Delivery of water under the terms of this article shall be deemed to be in compliance with its provisions when the amounts passing the state-line gaging stations are substantially equivalent to the scheduled amounts. Minor irregularities in flow shall be disregarded.

" '(c) The storage capacity provided in reservoirs in the Little Blue River Basin in Nebraska shall be limited to a total of 200,000 acre-feet. Similarly, the storage capacity in reservoirs in the Big Blue River Basin in Nebraska shall be limited to 500,000 acre-feet. These limitations are exclusive of storage capacity that may be found necessary for regulation and use of waters imported into these basins in Nebraska; exclusive of storage capacity in small reservoir projects where the storage of water for subsequent use is less than 200 acre-feet; exclusive of storage capacity allocated to sedimentation and flood control; and exclusive of storage capacity allocated to, and from which water is released to accomplish low-flow augmentation for improvement of water quality, for fishery, wildlife, or recreation purposes, or for meeting the flow schedules at the Kansas-Nebraska State line as set out in Article V, paragraph 5.2.

" '5.3 KANSAS APPORTIONMENT. The State of Kansas shall have free and unrestricted use of all waters of the Big Blue River Basin flowing into Kansas from Nebraska in accordance with this Compact, and of all waters of the basin originating in Kansas, excepting such waters as may, in the future, flow from Kansas into Nebraska.

" '5.4 TRANSBASIN DIVERSION. In the event of any importation of water into the Big Blue River Basin by either State, the State making the importation shall have exclusive use of such imported water, including identifiable return flows therefrom. Neither State shall authorize the exportation from the Big Blue River of water originating within that basin without the approval of the administration.

" 'ARTICLE VI—WATER QUALITY CONTROL

" '6.1 The States of Kansas and Nebraska mutually agree to the principle of individual State efforts to control natural and man-made water pollution within each State and to the continuing support of both States in active water pollution control programs.

" '6.2 The two States agree to cooperate, through their appropriate State agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the Big Blue River Basin whenever such sources are called to their attention by the Administration.

" '6.3 The two States agree to cooperate in maintaining the quality of the waters of the Big Blue River Basin at or above such water quality standards as may be adopted, now or hereafter, by the water pollution control agencies of the respective States in compliance with the provisions of the Federal Water Quality Act of 1965, and amendments thereto.

" '6.4 The two States agree to the principle that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment.

" 'ARTICLE VII—GENERAL PROVISIONS

" '7.1 RIGHT TO STORE WATER IN UPPER STATE. The right of the State of Kansas or of any person, corporation, local agency, or entity in Kansas

to construct or participate in the future construction and use of any storage reservoir or diversion works in the Big Blue and Little Blue Basins of Nebraska for the purpose of regulating water to be used in Kansas shall never be denied: *Provided,* That such right is subject to the laws of the State of Nebraska and that any such storage for use by Kansas shall be excluded from the limitations on storage under Article V, paragraph 5.2(c).

" 'Releases of water from storage provided by Kansas interests in the State of Nebraska shall not be counted toward meeting the minimum flow requirements at the State line under the provisions of paragraph 5.2(b).

" '7.2 DISCLAIMER. Nothing contained in this Compact shall be deemed:

" '1. To impair, extend, or otherwise affect any right or power of the United States, its agencies, or its instrumentalities involved herein;

" '2. To subject to the laws of the States of Kansas and Nebraska any property or rights of the United States that were not subject to the laws of those States prior to the date of this Compact;

" '3. To interfere with or impair the right or power of either signatory State to regulate within its boundaries the appropriation, use, and control of waters within that State consistent with its obligations under this Compact.

" '7.3 INVALIDITY IN PART. Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of either signatory State or to the Constitution of the Untied States, all other severable provisions of this Compact shall continue in full force and effect.

" '7.4 FUTURE REVIEW. After the expiration of 5 years following the effective date of this Compact, the Administration may review any provision hereof; and it shall meet for such review whenever a member of the Administration from either State requests such review. All provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Administration, and until such changes in this Compact are ratified by the Legislatures of the respective States and are consented to by the Congress of the United States, in the same manner that this Compact is required to be ratified and consented to before it becomes effective.

" '7.5 TERMINATION. This Compact may be terminated at any time by appropriate action of the Legislatures of both signatory States. In the event of amendment or termination of the Compact, the water-resource developments made in compliance with, and reliant upon, this Compact shall continue unimpaired.

" 'ARTICLE VIII—RATIFICATION

" '8.1 This Compact shall become binding and obligatory when it shall have been ratified by the Legislature of each State and consented to by the Congress of the United States and when the Congressional Act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party and if the litigation

arises out of this Compact or its application, and if a signatory State is a party thereto.

" '8.2 Notice of ratification by the Legislature of each State shall be given by the Governor of that State to the Governor of the other State and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of the consent by the Congress of the United States.'

"IN WITNESS WHEREOF the authorized representatives have executed three counterparts hereof, each of which shall be and constitute an original, one of which shall be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

"Done at Lincoln, Nebraska, this 25th day of January 1971.

"Keith S. Krause
"KEITH S. KRAUSE
"Commissioner for the State of Kansas
"Dan S. Jones, Jr.
"DAN S. JONES, Jr.
"Commissioner for the State of Nebraska

"APPROVED:
"Elmo W. McClendon
"ELMO W. MCCLENDON
"Representative of the United States of America"

Sec. 2. [Consent to joinder of United States.]—To carry out the purposes of Article VIII of the Compact, the Congress hereby consents to have the United States named and joined as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party and if the litigation arises out of the Compact or its application, and if a signatory State is a party thereto. (86 Stat. 199)

Sec. 3. [Rights reserved.]—The right to alter, amend, or repeal this Act is expressly reserved. (86 Stat. 199)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Consent of Congress to Negotiate. The Act of June 3, 1960 (Public Law 86-489, 74 Stat. 160) granted the consent of Congress to the States of Kansas and Nebraska to negotiate and enter into a compact relating to the apportionment of waters of the Big Blue River. The 1960 Act appears in Volume III at page 1532.

Legislative History. H.R. 8116, Public Law 92-308 in the 92d Congress. Reported in House from Interior and Insular Affairs October 27, 1971; H.R. Rept. No. 591. Passed House November 15, 1971. Reported in Senate from Interior and Insular Affairs May 9, 1972; S. Rept. No. 786. Passed Senate, amended, May 11, 1972. House agrees to Senate amendment May 18, 1972.

NATIONAL DAM INSPECTION PROGRAM

An act to authorize the Secretary of the Army to undertake a national program of inspection of dams. (Act of August 8, 1972, Public Law 92-367, 86 Stat. 506)

[Sec. 1. Definition of "dam".]—The term "dam" as used in this Act means any artificial barrier, including appurtenant works, which impounds or diverts water, and which (1) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation or (2) has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. This Act does not apply to any such barrier which is not in excess of six feet in height, regardless of storage capacity or which has a storage capacity at maximum water storage elevation not in excess of fifteen acre-feet, regardless of height. (86 Stat. 506; 33 U.S.C. § 467).

Sec. 2. [Inspection of dams—Exceptions.]—As soon as practicable, the Secretary of the Army, acting through the Chief of Engineers, shall carry out a national program of inspection of dams for the purpose of protecting human life and property. All dams in the United States shall be inspected by the Secretary except (1) dams under the jurisdiction of the Bureau of Reclamation, the Tennessee Valley Authority, or the International Boundary and Water Commission, (2) dams which have been constructed pursuant to licenses issued under the authority of the Federal Power Act, (3) dams which have been inspected within the twelve-month period immediately prior to the enactment of this Act by a State agency and which the Governor of such State requests be excluded from inspection, and (4) dams which the Secretary of the Army determines do not pose any threat to human life or property. The Secretary may inspect dams which have been licensed under the Federal Power Act upon request of the Federal Power Commission and dams under the jurisdiction of the International Boundary and Water Commission upon request of such Commission. (86 Stat. 506; 33 U.S.C. § 467a)

Sec. 3. [Reports and advice to Governors.]—As soon as practicable after inspection of a dam, the Secretary shall notify the Governor of the State in which such dam is located the results of such investigation. The Secretary shall immediately notify the Governor of any hazardous conditions found during an inspection. The Secretary shall provide advice to the Governor, upon request, relating to timely remedial measures necessary to mitigate or obviate any hazardous conditions found during an inspection. (86 Stat. 507; 33 U.S.C. § 467b)

Sec. 4. [Conditions contributing danger to life and property.]—For the purpose of determining whether a dam (including the waters impounded by such dam) constitutes a danger to human life or property, the Secretary shall take into consideration the possibility that the dam might be endan-

gered by overtopping, seepage, settlement, erosion, sediment, cracking, earth movement, earthquakes, failure of bulkheads, flashboard, gates on conduits, or other conditions which exist or which might occur in any area in the vicinity of the dam. (86 Stat. 507; 33 U.S.C. § 467c)

Sec. 5. [Report to Congress.]—The Secretary shall report to the Congress on or before July 1, 1974, on his activities under the Act, which report shall include, but not be limited to—

(1) an inventory of all dams located in the United States;

(2) a review of each inspection made, the recommendations furnished to the Governor of the State in which such dam is located and information as to the implementation of such recommendation;

(3) recommendations for a comprehensive national program for the inspection, and regulation for safety purpose of dams of the Nation, and the respective responsibilities which should be assumed by Federal, State, and local governments and by public and private interests. (86 Stat. 507; 33 U.S.C. § 467d)

Sec. 6. [No liability created or relieved.]—Nothing contained in this Act and no action or failure to act under this Act shall be construed (1) to create any liability in the United States or its officers or employees for the recovery of damages caused by such action or failure to act; or (2) to relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam. (86 Stat. 507; 33 U.S.C. § 467e)

EXPLANATORY NOTE

Legislative History. H.R. 15951, Public Law 92-367 in the 92d Congress. Reported in House from Public Works July 20, 1972; H.R. Rept. No. 1232. Passed House July 24, 1972. Passed Senate July 25, 1972.

INCREASED AUTHORIZATION, UPPER COLORADO RIVER BASIN

An act to increase the authorization for appropriation for continuing work in the Upper Colorado River Basin by the Secretary of the Interior. (Act of August 10, 1972, Public Law 92-370, 86 Stat. 525)

[Increased authorization for units and participating projects of Colorado River Storage Project.]—In order to provide for completion of construction of the Curecanti, Flaming Gorge, Glen Canyon, and Navajo units, and transmission division of the Colorado River storage project, and for completion of construction of the following participating projects: Central Utah (initial phase—Bonneville, Jensen, Upalco, and Vernal units), Emery County, Florida, Hammond, LaBarge, Lyman, Paonia, Seedskadee, Silt, and Smith Fork; the amount which section 12 of the Act of April 11, 1956 (79 Stat. 105) authorizes to be appropriated is hereby further increased by the sum of $610,000,000, plus or minus such amounts, if any, as may be required, by reason of changes in construction costs as indicated by engineering cost indexes applicable to the type of construction involved. This additional sum shall be available solely for continuing construction of the previously authorized units and projects named herein. (86 Stat. 525; 43 U.S.C. § 620k note)

EXPLANATORY NOTES

Error in the Text. The Act of April 11, 1956 is cited in the text as appearing at 79 Stat. 105. The correct citation is 70 Stat. 105.

Legislative History. H.R. 13435, Public Law 92-370 in the 92d Congress. Reported in House from Interior and Insular Affairs March 23, 1972; H.R. Rept. No. 944. Passed House April 17, 1972. Reported in Senate from Interior and Insular Affairs May 5, 1972; S. Rept. No. 782. Passed Senate, amended, May 9, 1972. House asks for a conference June 27, 1972. Senate agrees to a conference June 28, 1972. Senate agrees to conference report July 20, 1972. Conference report filed July 24, 1972; H.R. Rept. No. 1234. House agrees to conference report July 31, 1972.

INCREASED AUTHORIZATION, MISSOURI RIVER BASIN

An act to increase the authorization for appropriation for completing work in the Missouri River Basin by the Secretary of the Interior. (Act of August 10, 1972, Public Law 92-371, 86 Stat. 525)

[Appropriation authorization increased—Limitations.]—There is hereby authorized to be appropriated the sum of $114,000,000 to provide for completion of work in the Missouri River Basin to be undertaken by the Secretary of the Interior pursuant to the comprehensive plan adopted by section 9(a) of the Act approved December 22, 1944 (Public Law 534, Seventy-eighth Congress), as amended and supplemented by subsequent Acts of Congress, plus or minus such amounts, if any, as may be required by reason of changes in construction costs, as indicated by engineering cost indices applicable to the type of construction involved. No part of the funds hereby authorized to be appropriated shall be available to initiate construction of any unit of the Pick-Sloan Missouri Basin program, whether or not included in said comprehensive plan; nor for prosecution of Garrison diversion unit, reauthorized by the Act of August 5, 1965 (79 Stat. 433). (86 Stat. 525)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3284, Public Law 92-371 in the 92nd Congress. Reported in Senate from Interior and Insular Affairs March 30, 1972; S. Rept. No. 726. Passed Senate April 4, 1972. Passed House, amended, April 17, 1972. Senate askes for a conference June 19, 1972. House agrees to a conference June 27, 1972. Conference report filed July 24, 1972; H.R. Rept. No. 1235. House agrees to conference report July 31, 1972. Senate agrees to conference report August 3, 1972. Companion bill H.R. 13434 reported in House from Interior and Insular Affairs April 11, 1972; H.R. Rept. No. 975.

DEFER CHARGES FOR NAVAL AIR STATION LANDS

An act to provide for deferment of construction charges payable by Westlands Water District attributable to lands of the Naval Air Station, Lemoore, California, included in said district, and for other purposes. (Act of August 10, 1972, Public Law 92-378, 86 Stat. 530)

[Sec. 1. Deferment of construction charges to Westlands Water District attributable to lands of Lemoore Naval Air Station.]—Construction charges payable by the Westlands Water District to the United States pursuant to contract number 14–06–200–2020A, dated April 1, 1965, or as it may be amended, between the United States and the district entered into under the Federal reclamation laws, Act of June 17, 1902 (32 Stat. 388), attributable, as determined by the Secretary of the Interior, to lands of the United States Naval Air Station, Lemoore, California, as are included in the Westlands Water District shall be deferred except as hereinafter provided, and no assessments shall be made on behalf of such charges against such lands until the Federal title thereto shall have been extinguished, and such lands become subject to assessment, whereupon such deferred charges shall be repaid by the Westlands Water District in not more than forty years from such date. (86 Stat. 530)

Sec. 2. [Lease of Naval Air Station lands for agricultural or grazing purposes.]—Lands of the Naval Air Station, Lemoore, California, irrigable through facilities constructed for the Westlands Water District, when offered for lease for agricultural or grazing purposes, shall be offered competitively on such terms as the Secretary of the Navy, or his designee, determines will provide the highest return to the United States consistent with sound land management practices. Such leases shall provide for payment by the lessees to the Department of the Navy of an amount sufficient to provide repayment to the United States of construction charges attributable to such lands which would be applicable if such lands were not owned by the Federal Government. The proceeds from the leases shall be paid by the Department of the Navy to the Department of the Interior and shall be covered into the reclamation fund and credited to the construction charges attributable to such lands until such construction charges are fully paid. The leases shall also be offered, insofar as practicable, in tracts of 160 irrigable acres each. Direct charges for water shall be paid by lessees to the Westlands Water District and shall be not less than the cost of such water service plus the District's operating and maintenance costs of delivering water. The leases may contain such provisions as to cancellation, use of land, term, and other matters as the Secretary of the Navy may determine are necessary to assure that national defense purposes are served. (86 Stat. 531).

Sec. 3. [No individual to hold more than one lease.]—No individual lessee shall hold more than one lease, pursuant to this Act, at any given time. (86 Stat. 531).

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Background. The Westlands Water District, located in the San Joaquin Valley, includes some 16,500 acres of Lemoore Naval Air Station lands. Since 1958, the Navy has leased about 12,627 acres for agriculture and grazing. The distribution system for the Westlands district includes specific features for service of the Navy lands; the District, however, cannot levy the usual ad valorem taxes on the Navy lands to repay the construction costs. The Act remedies the situation by providing for a deferral of construction charges against the lands until Federal title thereto is extinguished.

Acreage Limitation. The report of the Senate Committee on Interior and Insular Affairs states that the phrase "insofar as practicable," is included in section 2 to "accomodate situations where, as a result of the facilities and operations of the air station, irregular parcels of land must be leased which might sometimes slightly exceed the acreage limitations. It is not intended to waive the acreage limitation for convenience of administration of the leases." S. Rept. No. 645, 92d Cong., 2d Sess. 3 (1972).

Legislative History. H.R. 1682, Public Law 92-378 in the 92d Congress. Reported in House from Interior and Insular Affairs October 14, 1971; H.R. Rept. No. 569. Passed House November 1, 1971. Reported in Senate from Interior and Insular Affairs February 25, 1972; S. Rept. No. 645. Passed Senate, amended, March 1, 1972. House agrees to Senate amendments with amendments July 20, 1972. Senate agrees to House amendments to Senate amendments July 27, 1972.

AMEND DISTRIBUTION SYSTEM LOANS ACT

An act to amend the Act of July 4, 1955. as amended, relating to the construction of irrigation distribution systems. (Act of October 13, 1972, Public Law 92-487, 86 Stat. 804)

[Distribution System Loans Act amended.]—The Act of July 4, 1955, (69 Stat. 245), as amended by the Act of May 14, 1956 (70 Stat. 155), is hereby amended to read as follows:

"That distribution and drainage systems authorized to be constructed under the Federal reclamation laws may, in lieu of construction by the Secretary of the Interior (referred to in this Act as the 'Secretary'), be constructed by irrigation districts or other public agencies according to plans and specifications approved by the Secretary as provided in this Act. The drainage systems referred to in this Act are those required for collection and removal of excess irrigation water, either on or below the surface of the ground and do not include enlargement or alteration of existing waterways for disposition of natural runoff. (86 Stat. 894; 43 U.S.C. § 421a)

"Sec. 2. To assist financially in the construction of the aforesaid local distribution and drainage systems by irrigation districts and other public agencies the Secretary is authorized, on application therefor by such irrigation districts or other public agencies, to make funds available on a loan basis from moneys appropriated for the construction of such distribution and drainage systems to any irrigation district or other public agency in an amount equal to the estimated construction cost of such system, contingent upon a finding by the Secretary that the loan can be returned to the United States in accordance with the general repayment provisions of sections 2(d) and 9(d) of the Reclamation Project Act of August 4, 1939, and upon a showing that such district or agency already holds or can acquire all lands and interests in land (except public and other lands or interests in land owned by the United States which are within the administrative jurisdiction of the Secretary and subject to disposition by him) necessary for the construction, operation, and maintenance of the project. The Secretary shall, upon approval of a loan, including any loan for a distribution and drainage system receiving water from the San Luis unit, Central Valley project, authorized by the Act of June 3, 1960 (74 Stat. 156), enter into a repayment contract which includes such provisions as the Secretary shall deem necessary and proper to provide assurance of prompt repayment of the loan within not to exceed forty years plus a development period not to exceed ten years. The term 'irrigation district or other public agency' shall for the purposes of this Act mean any conservancy district, irrigation district, water users' organization, 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. (86 Stat. 804; 43 U.S.C. § 421b)

"Sec. 3. The Secretary shall require, as conditions to any such loan, that the borrower contribute in money or materials, labor, lands, or interests in

land, computed at their reasonable value, a portion not in excess of 10 per centum, of the construction cost of the distribution and drainage system (including all costs of acquiring lands and interests in land), that the plans for the system be in accord with sound engineering practices and be such as will achieve the purposes for which the system was authorized, and that the borrower agree to account in full in regard to all disbursements of borrowed funds and to return at once for application toward amortization of the loan all funds which are not expended in the construction of the distribution and drainage system. Every organization contracting for repayment of a loan under this Act shall operate and maintain its distribution and drainage works in conformity with reasonable contractual requirements determined to be appropriate for the protection of the United States. The Secretary is hereby authorized to reconvey to borrowers all lands or interests in lands and distribution works transferred to the United States under the provisions of this Act: *Provided*, That any reconveyance shall be upon the condition that the repayment contract of the borrower be amended to include such provisions as the Secretary shall deem necessary or proper to provide assurance of and security for prompt repayment of the loan. The head of any department or agency of the Government within whose administrative jurisdiction are lands owned by the United States the use of which is reasonably necessary for the construction, operation, and maintenance of distribution and drainage works under this Act may grant to a borrower or prospective borrower under this Act revocable permission for the use thereof in like manner as under the Acts of March 3, 1891, sections 18 to 21 (26 Stat. 1101), as amended (43 U.S.C. 946-949), January 21, 1895 (28 Stat. 635), as amended (43 U.S.C. 956), February 15, 1901 (31 Stat. 790), as amended (16 U.S.C. 79, 522; 43 U.S.C. 959), February 1, 1905 (33 Stat. 628; 16 U.S.C. 524), March 1, 1921 (41 Stat. 1194; 43 U.S.C. 950), May 9, 1941 (55 Stat. 183; 43 U.S.C. 931a), July 24, 1946, section 7 (60 Stat. 643), as amended (43 U.S.C. 931b), May 31, 1947 (61 Stat. 124; 38 U.S.C. 11i), February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), or September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c-931d), or any other similar Act which is applicable to the lands involved: *Provided*, That no such permission shall be granted in the case of lands being administered for national park, national monument, or wildlife purposes. (86 Stat. 804; 43 U.S.C. § 421c)

EXPLANATORY NOTE

References in the Text. The statutes referred to in a group in the text deal with the granting of rights-of-way in the public lands of the United States for various purposes, including mining and milling in the National forests, and for irrigation canals, reservoirs, and the like. Of the Acts referred to, the Acts of 1891 and 1901 appear in Volume I at pages 22 and 29, respectively. The rest do not appear herein.

"Sec. 4. Except as herein otherwise provided, the provisions of the Federal reclamation laws, and Acts amendatory thereto, are continued in full force and effect. (86 Stat. 805; 43 U.S.C. § 421d)

"Sec. 5. Unless otherwise provided in the Act authorizing construction of the project, the delivery and distribution of municipal and industrial

water supplies shall be deemed to be an authorized project purpose under this Act, and where appropriate, an allocation of loan funds acceptable to the Secretary shall be made between irrigation and municipal and industrial purposes. Loan repayment contracts shall require that the borrower pay interest on that portion of the unamortized loan obligation (including interest during construction) allocated in each year to municipal and industrial purposes at the rate provided in the Act authorizing the project, or absent such an authorized rate, at a rate determined by the Secretary of the Treasury as of the beginning of the fiscal year in which the contract, or contract amendment entered into pursuant to section 6 hereof, is executed, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue, and by adjusting such average rate to the nearest one-eighth of 1 per centum. (86 Stat. 805; 43 U.S.C. § 421e)

"Sec. 6. The Secretary is hereby authorized to negotiate amendments to existing water service and irrigation distribution system loan contracts to conform said contracts to the provisions of this Act. (86 Stat. 805; 43 U.S.C. § 421f)

"Sec. 7. Nothing in this Act shall be construed to repeal or limit the procedural and substantive requirements of section 8 of the Act of June 17, 1902 (32 Stat. 388). (86 Stat. 806; 43 U.S.C. § 421g)

"Sec. 8. Works financed by loans made under this Act shall be subject to all procedural and substantive requirements of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151); and the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321)." (86 Stat. 806; 43 U.S.C. § 421h)

EXPLANATORY NOTES

Purpose of the Act. The report of the House Committee on Interior and Insular Affairs states that the purpose of the Act is "to improve the administration of the distribution systems loan program authorized by the Act of July 4, 1955 (69 Stat. 244) as amended by the Act of May 14, 1956 (70 Stat. 155)." H.R. Rept. No. 1213, 92d Cong., 2d Sess. 3 (1972). The original Act appears in Volume II at page 1218.

Editor's Note, Annotations. Annotations of opinions are found in Supplement I under "July 4, 1955—Distribution System Loans."

Legislative History. H.R. 9198, Public Law 92-487 in the 92d Congress. Reported in House from Interior and Insular Affairs June 30, 1972; H.R. Rept. No. 1213. Passed House August 7, 1972. Reported in Senate from Interior and Insular Affairs September 29, 1972; S. Rept. No. 1244. Passed Senate October 4, 1972.

FEDERAL WATER POLLUTION CONTROL ACT (CLEAN WATER ACT)

Editor's Note. The basic Federal Water Pollution Control Act (Act of July 9, 1956, 70 Stat. 498) was extensively revised by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500, 86 Stat. 816). It has also been amended a number of times before and since 1972. For editorial convenience, extracts from the Act as amended are set forth below as they appear in Chapter 26 of Title 33 of the United States Code as of January 14, 1983 (33 U.S.C., 1982 ed.). Sections 101-116 are codified as §§1251-1266 of the U.S. Code; Sections 201-217 as §§1281-1297; Sections 301-318 as §§1311-1328; Sections 401-405 as §§1341-1345; and Sections 501-517 as §§1361-1376. The Act as amended is often referred to as the Clean Water Act.

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

§§ 1251. Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration,

preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated

or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources. (June 30, 1948, ch. 758, title I, § 101, as added October 18, 1972, Pub. L. 92-500 § 2, 86 Stat. 816, and amended December 27, 1977, Pub. L. 95-217, §§5(a), 26(b), 91 Stat. 1567, 1575.)

EXPLANATORY NOTES

Short Title. Section 1 of Pub. L. 92-500 provided that: "That this Act [enacting this chapter, amending section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and Section 711 of former Title 31, Money and Finanace, and enacting provisions set out as notes under this section and sections 1281 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972'."

Section 518 of Act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 896, and amended Dec. 27, 1977, Pub. L. 95-217, § 2, 91 Stat. 1566, provided that: "This Act [this chapter] may be cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act)."

Savings Provisions. Section 4 of Pub. L. 92-500 provided that: "(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

"(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act."

Oversight Study. Section 5 of Pub. L. 92-500 authorized the Comptroller General of the United States to conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution conducted, supported, or assisted by any Federal agency pursuant to any Federal law or regulation and assess conflicts between these programs and their coordination and efficacy, and to report to Congress thereon by Oct. 1, 1973.

International Trade Study. Section 6 of Pub. L. 92-500 provided that:

"(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine—

"(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and

the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

"(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

"(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation—

"(A) does not require its manufacturers to implement pollution abatement and control programs.

"(B) requires a lesser degree of pollution abatement and control in its programs, or

"(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;

"(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

"(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

"(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section [Oct. 18, 1972] of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months."

International Agreements. Section 7 of Pub. L. 92-500 provided that: "The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums."

National Policies and Goal Study. Section 10 of Pub. L. 92-500 authorized the President to make a full and complete investigation and study of all national policies and goals established by law to determine what the relationship should be between these policies and goals, taking into account the resources of the Nation, and to report the results of his investigation and study together with his recommendations to Congress not later than two years after Oct. 18, 1972.

Efficiency Study. Section 11 of Pub. L. 92-500 authorized the President, by utilization of the General Accounting Office, to conduct a full and complete investigation and study of ways and means of most effectively using all of the various resources, facilities, and personnel of the Federal Government in order to most efficiently carry out the provisions of this chapter and to report the results of his investigation and study together with his recommendations to Congress not later than two hundred and seventy days after Oct. 18, 1972.

Sex Discrimination. Section 13 of Pub. L. 92-500 provided that: "No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act [see Short Title note above] the Federal Water Pollution Control Act [this chapter], or the Environmental Financing Act [set out as a note under section 1281 of this title]. This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

§ 1252. Comprehensive programs for water pollution control

(a) Preparation and development

The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) Planning for reservoirs; storage for regulation of streamflow

(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefit of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this chapter shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Energy Regulatory Commission for a hydroelectric power project shall include storage for regulation of

streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c) Basins; grants to State agencies

(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after October 18, 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control plan for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which—

(A) is consistent with any applicable water quality standards effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, any areawide waste management plans developed pursuant to section 1288 of this title, and any State plan developed pursuant to section 1313(e) of this title.

(3) For the purposes of this subsection the term "basin" includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof as well as the lands drained thereby.

(d) Report to Congress

The Administrator, after consultation with the States, and River Basin Commissions established under the Water Resources Planning Act [42 U.S.C. 1962 et seq.], shall submit a report to Congress on or before July 1, 1978, which analyzes the relationship between programs under this chapter, and the programs by which State and Federal agencies allocate quantities of water. Such report shall include recommendations concerning the

policy in section 1251(g) of this title to improve coordination of efforts to reduce and eliminate pollution in concert with programs for managing water resources. (June 30, 1948, ch. 758, title I, §102, as added October 18, 1972, Pub. L. 92-500; § 2, 86 Stat. 817, and amended Aug. 4, 1977, Pub. L. 95-91, title IV, § 402(a)(i)(A), 91 Stat. 583; December 27, 1977, Pub. L. 95-217, § 5(b), 91 Stat. 1567.)

§ 1252a. Reservoir projects, water storage; modification; storage for other than for water quality, opinion of Federal agency, committee resolutions of approval; provisions inapplicable to projects with certain prescribed water quality benefits in relation to total project benefits

In the case of any reservoir project authorized for construction by the Corps of Engineers, Bureau of Reclamation, or other Federal agency when the Administrator of the Environment Protection Agency determines pursuant to section 1252(b) of this title that any storage in such project for regulation of streamflow for water quality is not needed, or is needed in a different amount, such project may be modified accordingly by the head of the appropriate agency, and any storage no longer required for water quality may be utilized for other authorized purposes of the project when, in the opinion of the head of such agency, such use is justified. Any such modification of a project where the benefits attributable to water quality are 15 per centum or more but not greater than 25 per centum of the total project benefits shall take effect only upon the adoption of resolutions approving such modification by the appropriate committees of the Senate and House of Representatives. The provisions of the section shall not apply to any project where the benefits attributable to water quality exceed 25 per centum of the total project benefits. (Pub. L. 93-251, title I, § 65, March 7, 1974, 88 Stat. 30.)

§ 1253. Interstate cooperation and uniform laws

(a) The Administrator shall encourage cooperative activities by the States for the prevention, reduction, and elimination of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention, reduction, and elimination of pollution; and encourage compacts between States for the prevention and control of pollution.

(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress. (June 30, 1948, ch. 758, title I, §103, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 818.)

§ 1254. Research, investigations, training, and information

(a) Establishment of national programs; cooperation; investigations; water quality surveillance system; reports

The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 1375 of this title; and

(6) initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this chapter; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) Authorized activities of Administrator

In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private

agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(3) make grants to State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

(4) contract with public or private agencies, institutions, organizations, and individuals, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41, referred to in paragraph (1) of subsection (a) of this section;

(5) establish and maintain research fellowships at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof; and

(7) develop effective and practical processes, methods, and prototype devices for the prevention, reduction, and elimination of pollution.

EXPLANATORY NOTE

References in the Text. Section 3324 of title 31, referred to in subsection (b)(4) of the text, prohibits the advance of public funds for any purpose unless specifically authorized. The section appears in the Appendix in Supplement I. Section 5 of title 41 also referred to in subsection (b)(4) of the text, requires purchases and contracts for supplies and services for the Government to be made or entered into only after advertisement. Section 5 of title 41 appears in Volume III at page 1987 and in the Appendix in Supplement I.

(c) Research and studies on harmful effects of pollutants; cooperation with Secretary of Health and Human Services

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants. In order to avoid duplication of effort, the Administrator shall, to the extent practicable, conduct such research in cooperation with and through the facilities of the Secretary of Health and Human Services.

(d) Sewage treatment; identification and measurement of effects of pollutants; augmented streamflow

In carrying out the provisions of this section the Administrator shall develop and demonstrate under varied conditions (including conducting such basic and applied research, studies, and experiments as may be necessary):

(1) Practicable means of treating municipal sewage, and other waterborne wastes to implement the requirements of section 1281 of this title;

(2) Improved methods and procedures to identify and measure the effects of pollutants, including those pollutants created by new technological developments; and

(3) Methods and procedures for evaluating the effects on water quality of augmented streamflows to control pollution not susceptible to other means of prevention, reduction, or elimination.

(e) Field laboratory and research facilities

The Administrator shall establish, equip, and maintain field laboratory and research facilities, including, but not limited to, one to be located in the northeastern area of the United States, one in the Middle Atlantic area, one in the southeastern area, one in the midwestern area, one in the southwestern area, one in the Pacific Northwest, and one in the State of Alaska, for the conduct of research, investigations, experiments, field demonstrations and studies, and training relating to the prevention, reduction and elimination of pollution. Insofar as practicable, each such facility shall be located near institutions of higher learning in which graduate training in such research might be carried out. In conjunction with the development of criteria under section 1343 of this title, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

* * * * *

(h) Lake pollution

The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

* * * * *

(k) Land acquisition

In carrying out the provisions of this section relating to the conduct by the Administrator of demonstration projects and the development of field laboratories and research facilities, the Administrator may acquire land and interests therein by purchase, with appropriated or donated funds, by donation, or by exchange for acquired or public lands under his jurisdiction which he classifies as suitable for disposition. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Administrator as the circumstances require.

(l) Collection and dissemination of scientific knowledge on effects and control of pesticides in water

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested

individuals, as soon as practicable but not later than January 1, 1973, develop and issue to the States for the purpose of carrying out this chapter the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

* * * * *

(n) Comprehensive studies of effects of pollution on estuaries and estuarine zones; reports

(1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine zones; and identify the problems and areas where further research and study are required.

(3) The Administrator shall submit to Congress, from time to time, reports of the studies authorized by this subsection but at least one such report shall be made available to all interested parties, public and private.

(4) For the purpose of this subsection, the term "estuarine zones" means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels, and the term "estuary" means all or part of the mouth of a river or stream or other body of water

having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage

(o) Methods of reducing total flow of sewage and unnecessary water consumption; reports

(1) The Administrator shall conduct research and investigations on devices, systems, incentives, pricing policy, and other methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services. Such research and investigations shall be directed to develop devices, systems, policies, and methods capable of achieving the maximum reduction of unnecessary water consumption.

(2) The Administrator shall report the preliminary results of such studies and investigations to the Congress within one year after October 18, 1972, and annually thereafter in the report required under subsection (a) of section 1375 of this title. Such report shall include recommendations for any legislation that may be required to provide for the adoption and use of devices, systems, policies, or other methods of reducing water consumption and reducing the total flow of sewage. Such report shall include an estimate of the benefits to be derived from adoption and use of such devices, systems, policies, or other methods and also shall reflect estimates of any increase in private, public, or other cost that would be occasioned thereby.

(p) Agricultural pollution

In carrying out the provisions of subsection (a) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine new and improved methods and the better application of existing methods of preventing, reducing, and eliminating pollution from agriculture, including the legal, economic, and other implications of the use of such methods.

(q) Sewage in rural areas; national clearinghouse for alternative treatment information

(1) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, communitywide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

(2) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods for the collection and treatment of sewage and other liquid wastes combined with the treatment and disposal of solid wastes.

(3) The Administrator shall establish, either within the Environmental Protection Agency, or through contract with an appropriate public or private non-profit organization, a national clearinghouse which shall (A) receive reports and information resulting from research, demonstrations, and other projects funded under this chapter related to paragraph (1) of this subsection and to subsection (e)(2) of section 1255 of this title; (B) coordinate and disseminate such reports and information for use by Federal and State agencies, municipalities, institutions, and persons in developing new and improved methods pursuant to this subsection; and (C) provide for the collection and dissemination of reports and information relevant to this subsection from other Federal and State agencies, institutions, universities, and persons.

* * * * *

(t) Thermal discharges

The Administrator shall, in cooperation with State and Federal agencies and public and private organizations, conduct continuing comprehensive studies of the effects and methods of control of thermal discharges. In evaluating alternative methods of control the studies shall consider (1) such data as are available on the latest available technology, economic feasibility including cost-effectiveness analysis, and (2) the total impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of freshwater and other natural resources. Such studies shall consider methods of minimizing adverse effects and maximizing beneficial effects of thermal discharges. The results of these studies shall be reported by the Administrator as soon as practicable, but not later than 270 days after October 18, 1972, and shall be made available to the public and the States, and considered as they become available by the Administrator in carrying out section 1326 of this title and by the States in proposing thermal water quality standards.

* * * *

(June 30, 1948, ch. 758, title I, §104, as added October 18,1972, Pub. L. 92-500, § 2, 86 Stat. 819, and amended December 28, 1973, Pub. L. 93-207, § 1(1), 87 Stat. 906; January 2, 1975, Pub. L. 93-592, § 1, 88 Stat. 1924; December 27, 1977, Pub. L. 95-217, §§ 4(a), (b), 6, 7, 91 Stat. 1566, 1567; November 2, 1978, Pub. L. 95-576, §1(a), 92 Stat. 2467; October 17, 1979, Pub. L. 96-88, title V, §509(6), 93 Stat. 695; October 21, 1980, Pub. L. 483, § 1(a), 94 Stat. 2360.)

§ 1255. Grants for research and development

* * * * *

(b) Demonstration projects for advanced treatment and environmental enhancement techniques to control pollution in river basins.

The Administrator is authorized to make grants to any State or States or interstate agency to demonstrate, in river basins or portions thereof, advanced treatment and environmental enhancement techniques to control pollution from all sources, within such basins or portions thereof, including nonpoint sources, together with in stream [sic] water quality improvement techniques.

* * * * *

(e) Research and demonstration projects covering agricultural pollution and pollution from sewage in rural areas; dissemination of information

(1) The Administrator is authorized to (A) make, in consultation with the Secretary of Agriculture, grants to persons for research and demonstration projects with respect to new and improved methods of preventing, reducing, and eliminating pollution from agriculture, and (B) disseminate, in cooperation with the Secretary of Agriculture, such information obtained under this subsection, section 1254(p) of this title, and section 1314 of this title as will encourage and enable the adoption of such methods in the agricultural industry.

(2) The Administrator is authorized, (A) in consultation with other interested Federal agencies, to make grants for demonstration projects with respect to new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, communitywide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems, and (B) in cooperation with other interested Federal and State agencies, to disseminate such information obtained under this subsection as will encourage and enable the adoption of new and improved methods developed pursuant to this subsection.

* * * * *

(June 30, 1948, ch. 758, title I, §105; as added October 18, 1972, Pub. L. 92-500, §2, 86 Stat. 825, and amended January 2, 1975, Pub. L. 93-592, §2, 88 Stat. 1925; December 27, 1977, Pub. L. 95-217, §§8, 9, 91 Stat. 1568.)

* * * * *

§ 1265. In-place toxic pollutants

The Administrator is directed to identify the location of in-place pollutants with emphasis on toxic pollutants in harbors and navigable waterways

and is authorized, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials from critical port and harbor areas. There is authorized to be appropriated $15,000,000 to carry out the provisions of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, §115, as added Oct. 18, 1972, Pub. L. 92-500, §2, 86 Stat. 833.)

* * * * *

SUBCHAPTER II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

* * * * *

§ 1288. Areawide waste treatment management

(a) Identification and designation of areas having substantial water quality control problems

For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

(1) The Administrator, within ninety days after October 18, 1972, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment

management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b) Planning process

(1)(A) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 1281 of this title. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(B) For any agency designated after 1975 under subsection (a) of this section and for all portions of a State for which the State is required to act as the planning agency in accordance with subsection (a)(6) of this section, the initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than three years after the receipt of the initial grant award authorized under subsection (f) of this section.

(2) Any plan prepared under such process shall include, but not be limited to—

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water

collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works, and an identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to—

(i) implement the waste treatment management requirements of section 1281(c) of this title,

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including return flows from irrigated agriculture, and their cumulative effects, runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

(4)(A) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 1313 of this title so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for approval for application to a class or category of activity throughout such State.

(B) Any program submitted under subparagraph (A) of this paragraph which, in whole or in part, is to control the discharge or other placement of dredged or fill material into the navigable waters shall include the following:

(i) A consultation process which includes the State agency with primary jurisdiction over fish and wildlife resources.

(ii) A process to identify and manage the discharge or other placement of dredged or fill material which adversely affects navigable waters, which shall complement and be coordinated with a State program under section 1344 of this title conducted pursuant to this chapter.

(iii) A process to assure that any activity conducted pursuant to a best management practice will comply with the guidelines established under section 1344(b)(1) of this title, and sections 1317 and 1343 of this title.

(iv) A process to assure that any activity conducted pursuant to a best management practice can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the best management practice;

(II) change in any activity that requires either a temporary or permanent reduction or elimination of the discharge pursuant to the best management practice.

(v) A process to assure continued coordination with Federal and Federal-State water-related planning and reviewing processes, including the National Wetlands Inventory.

(C) If the Governor of a State obtains approval from the Administrator of a statewide regulatory program which meets the requirements of subparagraph (B) of this paragraph and if such State is administering a permit program under section 1344 of this title, no person shall be required to obtain an individual permit pursuant to such section, or to comply with a general permit issued pursuant to such section, with respect to any appropriate activity within such State for which a best management practice has been approved by the Administrator under the program approved by the Administrator pursuant to this paragraph.

(D)(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in ac-

cordance with the requirements of this section, the Administrator shall so notify the State, and if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(ii)In the case of a State with a program submitted and approved under this paragraph, the Administrator shall withdraw approval of such program under this subparagraph only for a substantial failure of the State to administer its program in accordance with the requirements of this paragraph.

(c) Regional operating agencies

(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

(I) to accept for treatment industrial wastes.

(d) Conformity of works with area plan

After a waste treatment management agency having the authority required by subsection (c) of this section has been designated under such subsection for an area and a plan for such area has been approved under

subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 1281(g)(1) of this title within such area except to such designated agency and for works in conformity with such plan.

(e) Permits not to conflict with approved plans

No permit under section 1342 of this title shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

* * * * *

(h) Technical assistance by Secretary of the Army

(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed [sic] under subsection (a) of this section in developing and operating a continuing area-wide waste treatment management planning process under subsection (b) of this section.

* * * * *

(i) State best management practices program

(1) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall, upon request of the Governor of a State, and without reimbursement, provide technical assistance to such State in developing a statewide program for submission to the Administrator under subsection (b)(4)(B) of this section and in implementing such program after its approval.

(2) There is authorized to be appropriated to the Secretary of the Interior $6,000,000 to complete the National Wetlands Inventory of the United States, by December 31, 1981, and to provide information from such Inventory to States as it becomes available to assist such States in the development and operation of programs under this chapter.

(j) Agricultural cost sharing

(1) The Secretary of Agriculture, with the concurrence of the Administrator, and acting through the Soil Conservation Service and such other agencies of the Department of Agriculture as the Secretary may designate, is authorized and directed to establish and administer a program to enter into contracts, subject to such amounts as are provided in advance by appropriation acts, of not less than five years nor more than ten years with owners and operators having control of rural land for the purpose of installing and maintaining measures incorporating best management practices to control nonpoint source pollution for improved water quality in those States or areas for which the Administrator has approved a plan under subsection (b) of this section where the practices to which the contracts

apply are certified by the management agency designated under subsection (c)(1) of this section to be consistent with such plans and will result in improved water quality. Such contracts may be entered into during the period ending not later than September 31, 1988. Under such contracts the land owner or operator shall agree—

(i) to effectuate a plan approved by a soil conservation district, where one exists, under this section for his farm, ranch, or other land substantially in accordance with the schedule outlined therein unless any requirement thereof is waived or modified by the Secretary;

(ii) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments and grants received thereunder, with interest, upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the soil conservation district, where one exists, and the Administrator, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

(iii) upon transfer of his right and interest in the farm, ranch, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder, with interest, unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(iv) not to adopt any practice specified by the Secretary on the advice of the Administrator in the contract as a practice which would tend to defeat the purposes of the contract;

(v) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program.

(2) In return for such agreement by the landowner or operator the Secretary shall agree to provide technical assistance and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost sharing is appropriate and in the public interest and which are approved for cost sharing by the agency designated to implement the plan developed under subsection (b) of this section. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the installation of the water quality management practices and measures under the contract, but not to exceed 50 per centum of the total cost of the measures set forth in the contract; except the Secretary may increase the matching cost share where he determines that (1) the main benefits to be derived from the measures are related to improving offsite water quality, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(3) The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other conservation, land use, or water quality programs.

(4) In providing assistance under this subsection the Secretary will give priority to those areas and sources that have the most significant effect upon water quality. Additional investigations or plans may be made, where necessary, to supplement approved water quality management plans, in order to determine priorities.

(5) The Secretary shall, where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program established in this subsection under regulations developed by the Secretary. Such agreements shall provide for the submission of such reports as the Secretary deems necessary, and for payment by the United States of such portion of the costs incurred in the administration of the program as the Secretary may deem appropriate.

(6) The contracts under this subsection shall be entered into only in areas where the management agency designated under subsection (c)(1) of this section assures an adequate level of participation by owners and operators having control of rural land in such areas. Within such areas the local soil conservation district, where one exists, together with the Secretary of Agriculture, will determine the priority of assistance among individual land owners and operators to assure that the most critical water quality problems are addressed.

(7) The Secretary, in consultation with the Administrator and subject to section 1314(k) of this title, shall, not later than September 30, 1978, promulgate regulations for carrying out this subsection and for support and cooperation with other Federal and non-Federal agencies for implementation of this subsection.

(8) This program shall not be used to authorize or finance projects that would otherwise be eligible for assistance under the terms of Public Law 83-566 [16 U.S.C. 1001 et seq.].

* * * * *

(June 30, 1948, ch. 758, title II, § 208, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 839, and amended December 27, 1977, Pub. L. 95-217, §§ 4(e), 31, 32, 33(a), 34, 35, 91 Stat. 1566, 1576-79; October 21, 1980, Pub. L. 96-483, § 1(d), (e), 94 Stat. 2360.)

§ 1289. Basin planning

(a) The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources

Planning Act [42 U.S.C. 1962 et seq.] for all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated under paragraphs (2), (3), and (4) of subsection (a) of section 1288 of this title.

(b) The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

* * * * *

(June 30, 1948, Ch. 758, Title II, § 209; October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 843.)

* * * * *

SUBCHAPTER III—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the eco-

nomic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(g) Waiver for certain pollutants

(1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

* * * * *

(j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than the 365th day which begins after December 29, 1981.

(B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than July 1, 1987, if it is also determined that such innovative system has the potential for industrywide application.

(l) Toxic pollutants

The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that—

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by Natioinal Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractural [sic] obligation to use funds in the amount required (but not less than $250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality

standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of applicant for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided,* That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit. (June 30, 1948, ch. 758, title III, § 301, as added Oct. 18, 1972, Pub. L. 92-500, § 2,86 Stat. 844, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 42-47, 53(c), 91 Stat. 1582-1586, 1590; Dec. 29, 1981, Pub. L. 97-117, §§ 21, 22(a)-(d), 95 Stat. 1631, 1632; Jan. 8, 1983, Pub. L. 97-440, 96 Stat. 2289.)

§ 1312. Water quality related effluent limitations

(a) Establishment

Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) Notice; hearing; adjustment of limitation by Administrator

(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and eco-

nomic benefits to be obtained (including the attainment of the objective of this chapter) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) Delay in application of other limitations

The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title. (June 30, 1948, ch. 758, title III, § 302, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 846.)

§ 1313. Water quality standards and implementation plans

(a) Existing water quality standards

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable rquirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters

shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure

protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314 (a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(e) Continuing planning process

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navig-

able waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards. (June 30, 1948, ch. 758, title III, § 303, as added October 18, 1972, Pub L. 92-500, § 2, 86 Stat. 846.)

§ 1314. Information and guidelines

(a) Criteria development and publication

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife,

plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpsoe of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) the Administrator, to the extent practicable before consideration of any application under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) Effluent limitation guidelines

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 1311(b)(2)(E) of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level or reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) Pollution discharge elimination procedures

The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) Secondary treatment information; alternative waste treatment management techniques; innovative and alternative wastewater treatment processes; facilities deemed equivalent of secondary treatment.

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months

after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after December 27, 1977, guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title.

(4) For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objectives of this chapter, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

(e) Best management practices for industry

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 1317(a)(1) or 1321 of this title, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 1311, 1312, 1316, 1317, or 1343 of this title, as the case may be, in any permit issued to a point source pursuant to section 1342 of this title.

(f) Identification and evaluation of nonpoint sources of pollution; processes, procedures, and methods to control pollution

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year after October 18, 1972 (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(g) Guidelines for pretreatment of pollutants

(1) For the purpose of assisting States in carrying out programs under section 1342 of this title, the Administrator shall publish, within one hundred and twenty days after October 18, 1972, and review at least annually thereafter and, if appropriate, revise gudielines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(h) Test procedures guidelines

The Administrator shall, within one hundred and eighty days from October 18, 1972, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 1341 of this title or permit application pursuant to section 1342 of this title.

(i) Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower

The Administrator shall (1) within sixty days after October 18, 1972, promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 1342 of this title, and (2) within sixty days from October 18, 1972, promulgate guidelines establishing the minimum procedural and other elements of any State program under section 1342 of this title, which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(j) Restoration and enhancement of publicly owned fresh water lakes

The Administrator shall issue information biennially on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned freshwater lakes.

(k) Agreements with Secretaries of Agriculture, Army, and Interior to provide maximum utilization of programs to achieve and maintain water quality; transfer of funds; authorization of appropriations

(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 1288 of this title.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal years 1979 through 1983. (June 30, 1948, ch. 758, title III, § 304, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 850, and amended December 27, 1977, Pub. L. 95-217, §§ 48-51, 62(b), 91 Stat. 1587, 1588, 1598; December 29, 1981, Pub. L. 97-117, § 23, 95 Stat. 1632.)

§ 1315. State reports on water quality; transmittal to Congress

(a) Omitted.

(b)(1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this chapter (as identified by the Administrator pursuant to criteria

published under section 1314(a) of this title) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and October 1, 1976, and biennially thereafter. (June 30, 1948, ch. 758, title III, § 305, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 853, and amended December 27, 1977, Pub. L. 95-217, § 52, 91 Stat. 1589.)

§ 1316. National standards of performance

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to pur-

chase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;
paperboard, builders paper and board mills;
meat product and rendering processing;
dairy product processing;
grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and
timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon

promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality, environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) State enforcement of standards of performance

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(d) Protection from more stringent standards

Notwithstanding any other provision of this chapter, any point source the construction of which is commenced after October 18, 1972, and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of title 26 whichever period ends first.

(e) Illegality of operation of new sources in violation of applicable standards of performance

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source. (June 30, 1948, ch. 758, Title III, § 306, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 854.)

§ 1317. Toxic and pretreatment effluent standards

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth

day after December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any polluant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered

95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section

introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) New sources of pollutants into publicly owned treatment works

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) Operation in violation of standards unlawful

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard. (June 30, 1948, ch. 758, title III, § 307, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 856, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 53(a), (b), 54(a), 91 Stat. 1589-1591.)

§ 1318. Records and reports; inspections

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard,

pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Availability to public; trade secrets exception

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

EXPLANATORY NOTE

Reference in the Text. Section 1905 of title 18 of the United States Code, referred to in subsection (b) of the text, establishes penalties for any officer or employee of the United States who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information. The section appears in Volume III, Appendix, at page 1949 and in the new Appendix in Supplement I.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point

sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States). (June 30, 1948, ch. 758, title III, § 308, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 858, and amended December 27, 1977, Pub. L. 95-217, § 67(c)(1), 91 Stat. 1606.)

§ 1319. Enforcement

(a) State enforcement; compliance orders

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title in a permit issued by a State under an approved permit program under section 1342 or 1344 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(5)(A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this chapter or in any permit issued under this chapter, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 1342 of this title was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(6) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 1311(b)(1)(A) or (C) of this title, (B) that such person cannot meet the requirements for a time extension under section 1311(i)(2) of this title, and (C) that the most expeditious and appropriate means of compliance with this chapter by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this chapter at the earliest date practicable, but not later than July 1, 1983, by discharging into a publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

(b) Civil actions

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under

subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) Criminal penalties

(1) Any person who willfully or negligently violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State or in a permit issued under section 1344 of this title by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(d) Civil penalties

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit issued under section 1344 of this title by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) State liability for judgments and expenses

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

* * * * *

(June 30, 1948, ch. 758, title III, § 309, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 859, and amended December 27, 1977, Pub. L. 95-217, §§ 54(b), 55, 56, 67(c)(2), 91 Stat. 1591, 1592, 1606.)

§ 1320. International pollution abatement

(a) Hearing; participation by foreign nations

Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

EXPLANATORY NOTE

References in the Text. The 1909 Boundary Waters Treaty between Canada and the United States (36 Stat. 2448), referred to in the text, appears in Volume I at page 129. The Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), also referred to in the text, appears in Volume II at page 750.

(b) Functions and responsibilities of Administrator not affected

The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

* * * * *

(June 30, 1948, ch. 758, title III, § 310, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 860.)

* * * * *

§ 1323. Federal facilities pollution control

(a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft,

vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b)(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 1314(d)(3) of this title. Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall not be initiated for facilities for treatment of wastewater at any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 1342 of this title. (June 30, 1948, ch. 758, title III, § 313, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 875, and amended December 27, 1977, Pub. L. 95-217, §§ 60, 61(a), 91 Stat. 1597, 1598.)

EXPLANATORY NOTES

Supplementary Provision: Army Contribution To Costs of Sewage Treatment Plant. Section 107 of the Water Resources Development Act of 1974 (Act of March 7, 1974, 88 Stat. 43) authorizes the Secretary of the Army to pay a portion of the costs of regional or municipal sewage treatment plants attributable to recreation or other facilities of Corps of Engineers water resources projects. Extracts from the 1974 Act, including section 107, appear in Volume IV in chronological order.

NOTE OF OPINION

1. Releases to reduce salt water intrusion

The Federal Water Pollution Control Act, as amended, does not require the Bureau of Reclamation to make releases from the Central Valley Project or to refrain from pumping from the Sacramento-San Joaquin Delta in order to maintain State water quality standards for salt water intrusion, as the only State standard imposed on Federal agencies are those with respect to the discharge of pollutants from effluent sources. Those provisions of the act which do apply to salt water intrusion do not purport to affect the operations of Federal agencies. Memorandum of Associate Solicitor Garner to Commissioner of Reclamation, September 15, 1975.

§ 1324. Clean lakes

(a) Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

* * * * *

(June 30, 1948, ch. 758, title III, § 314, as added October 18, 1977, Pub. L. 92-500, § 2, 86 Stat. 875, and amended December 27, 1977, Pub. L. 95-217, §§ 4(f), 62(a), 91 Stat. 1567, 1598; October 21, 1980, Pub. L. 96-483, § 1(f), 94 Stat 2360.)

* * * * *

§ 1326. Thermal discharges

(a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Cooling water intake structures

Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point

source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1311 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of title 26, whichever period ends first. (June 30, 1948, ch. 758, title III, § 316, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 876.)

§ 1327. Omitted

§ 1328. Aquaculture

(a) Authority to permit discharge of specific pollutants

The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 1342 of this title.

(b) Procedures and guidelines

The Administrator shall by regulation establish any procedures and guidelines which the Administrator deems necessary to carry out this section. Such regulations shall require the application to such discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objective of this chapter.

(c) State administration

Each State desiring to administer its own permit program within its jurisdiction for discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter. (June 30, 1948, ch. 758, title III, § 318, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 877, and amended December 27, 1977, Pub. L. 95-217, § 63, 91 Stat. 1599.)

SUBCHAPTER IV—PERMITS AND LICENSES

§ 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1)Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities,

which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements

Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees

In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Limitations and monitoring requirements of certification

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section. (June 30, 1948, ch. 758, title IV, § 401, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 877, and amended December 27, 1977, Pub. L. 95-217, §§ 61(b), 64, 91 Stat. 1598, 1599.)

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subschapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under

State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing

pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of federal program upon submission of State program; withdrawal of approval of State program

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in

writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is

violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Irrigation return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit. (June 30, 1948, ch. 758, title IV, § 402, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 880, and amended December 27, 1977, Pub. L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 66, 91 Stat. 1577, 1588, 1591, 1599, 1600.)

EXPLANATORY NOTE

Reference in the Text. Section 407, referred to in subsections (a) and (k) of the text, is section 13 of the Act of March 3, 1899 (30 Stat. 1152), which provides for the issuance of permits by the Chief of Engineers for the disposal of material in navigable waters. It appears in Supplement I under "March 3, 1899—Structures On Navigable Waters."

NOTE OF OPINION

1. Federal installations—State permits

Federal installations discharging water pollutants in a State with a federally approved permit program under the Federal Water Pollution Control Act Amendments of 1972 are to secure their permits from the Environmental Protection Agency and cannot be required to obtain State permits. Federal installations are subject to State regulation only when and to the extent that Congressional authorization is clear and unambiguous. Section 313 of the Amendments does not expressly provide that Federal discharges must obtain State permits nor does section 313 or any other section expressly state that obtaining a permit is a "requirement respecting control and abatement of pollution." *E.P.A. v. California ex rel. State Water Resources Control Board,* 426 U.S. 200 (1976).

* * * * *

§ 1344. Permits for dredged or fill material

(a) Discharge into navigable waters at specified disposal sites

The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Specification for disposal sites

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) Denial or restriction of use of defined areas as disposal sites

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas

(including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) "Secretary" defined

The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

(e) General permits on State, regional, or nationwide basis

(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) Non-prohibited discharge of dredged or fill material

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where

such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 1288(b)(4) of this title which meets the requirements of subparagraphs (B) and (C) of such section,

is not prohibited by or otherwise subject to regulation under this section or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g) State administration

(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h) Determination of State's authority to issue permits under State program; approval; notification; transfers to State program

(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which—

(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 1317 and 1343 of this title;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 1318 of this title, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title.

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect of any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State—

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsections (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Withdrawal of approval

Whenever the Administrator determines after public hearing that a State is not administering a program approved under subsection (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and

(e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Copies of applications for State permits and proposed general permits to be transmitted to Administrator

Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E) of this section, or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this chapter.

(k) Waiver

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) Categories of discharges not subject to requirements

The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Comments on permit applications or proposed general permits by Secretary of the Interior acting through Director of United States Fish and Wildlife Service

Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Enforcement authority not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(o) Public availability of permits and permit applications

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance

Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1317, and 1343 of this title.

(q) Minimization of duplication, needless paperwork, and delays in issuance; agreements

Not later than the one-hundred-eightieth day after December 27, 1977, the Secretary shall enter into agreements with the Administrator, the Sec-

retaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

(r) Federal projects specifically authorized by Congress

The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after December 27, 1977, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.

(s) Violation of permits

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such person to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant

is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such acton [sic] shall be given immediately to the appropriate State.

(4)(A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(B) For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(5) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(t) Navigable waters within State jurisdiction

Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation. (June 30, 1948, ch. 758, title IV, § 404, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 884, and amended December 27, 1977, Pub. L. 95-217, § 67(a), (b), 91 Stat. 1600.)

* * * * *

SUBCHAPTER V—GENERAL PROVISIONS

§ 1361. Administration

(a) Authority of Administrator to prescribe regulations

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.

(b) Utilization of other agency officers and employees

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this chapter.

* * * * *

(June 30, 1948, ch. 758, title V, § 501, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 885.)

§ 1362. Definitions

Except as otherwise specifically provided, when used in this chapter:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D—Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (June 30, 1948, ch. 758, title V, § 502, as added October 18, 1972,

Pub. L. 92-500, § 2, 86 Stat. 886, and amended December 27, Pub. L. 95-217, § 33(b), 91 Stat. 1577.)

* * * * *

§ 1364. Emergency powers

(a) Emergency powers

Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

(b) Repealed. Pub. L. 96-510, title III, § 304(a), Dec. 11, 1980, 94 Stat. 2809 (June 30, 1948, ch. 756, title V, § 504, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 888, and amended December 27, 1977, Pub. L. 95-217, § 69, 91 Stat. 1607; December 11, 1980, Pub. L. 96-510, title III, § 304(a), 94 Stat. 2809.)

§ 1365. Citizen suits

(a) Authorization; jurisdiction

Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the

alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation

For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title, (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; or (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title).

(g) Citizen

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State. (June 30, 1948, ch. 758, title V, § 505, as added October 18, 1972, Pub. L. 92-500, § 286 Stat. 888).

* * * * *

§1367. Employee protection

(a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohbited

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Application for review; investigation; hearing; review

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems

appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this chapter.

(c) Costs and expenses

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Deliberate violations by employee acting without direction from his employer or his agent

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 1311 or 1312 of this title, standards of performance under section 1316 of this title, effluent standard, prohibition or pretreatment standard under section 1317 of this title, or any other prohibition or limitation established under this chapter.

(e) Investigations of employment reductions

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this chapter, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available

to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this chapter. (June 30, 1948, ch. 758, title V, § 507, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 890.)

§ 1368. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 1319(c) of this title, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

(b) Notification of agencies

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Omitted

(d) Exemptions

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) Annual report to Congress

The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance. (June 30, 1948, ch. 758, title V, § 508, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 891).

§ 1369. Administrative procedure and judicial review

(a) Subpenas

(1) For purposes of obtaining information under section 1315 of this title, or carrying out section 1367(e) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of

section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 1314(b) and (c) of this title. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

EXPLANATORY NOTE

Reference in the Text. Section 1905 of title 18 of the United States Code, referred to in paragraph (1) of the text, provides penalties for any officer or employee of the United States who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any confidential information. The section appears in Volume III at page 1949 and in the new Appendix in Supplement I.

(b) Review of Administrator's actions

(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 1315 of this title, and (F) in issuing or denying any permit under section 1342 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(c) Additional evidence

In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence. (June 30, 1948, ch. 758, title V, § 509, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 891, and amended December 28, 1973, Pub. L. 93-207, § 1(6), 87 Stat. 906.)

§ 1370. State authority

Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States. (June 30, 1948, ch. 758, title V, § 510, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 893.)

§ 1371. Authority under other laws and regulations

(a) Impairment of authority or functions of officials and agencies; treaty provisions

This chapter shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this chapter; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899, (30 Stat. 1112); except that any permit issued under section 1344 of this title shall be conclusive as to the effect

on water quality of any discharge resulting from any activity subject to section 403 of this title, or (3) affecting or impairing the provisions of any treaty of the United States.

(b) Discharges of pollutants into navigable waters

Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 U.S.C. 421) and the Supervisory Harbors Act of 1888 (25 Stat. 209; 33 U.S.C. 441-451b) shall be regulated pursuant to this chapter, and not subject to such Act of 1910 and the Act of 1888 except as to effect on navigation and anchorage.

(c) Action of the Administrator deemed major Federal action; construction of the National Environmental Policy Act of 1969

(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 1281 of this title, and the issuance of a permit under section 1342 of this title for the discharge of any pollutant by a new source as defined in section 1316 of this title, no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]; and

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to—

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this chapter or the adequacy of any certification under section 1341 of this title; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.

(d) Consideration of international water pollution control agreements

Notwithstanding this chapter or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in subchapter II of this chapter), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking. (June 30, 1948, ch. 758, title V, § 511, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 893, and amended January 2, 1974, Pub. L. 93-243, § 3, 87 Stat. 1069.)

* * * * *

§ 1374. Effluent Standards and Water Quality Information Advisory Committee

(a) Establishment; membership; term

(1) There is established an Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after October 18, 1972.

(2) All members of the Committee shall be selected from the scientific community, qualified by education, training, and experience to provide, assess, and evaluate scientific and technical information on effluent standards and limitations.

(3) Members of the Committee shall serve for a term of four years, and may be reappointed.

(b) Action on proposed regulations

(1) No later than one hundred and eighty days prior to the date on which the Administrator is required to publish any proposed regulations required by section 1314(b) of this title, any proposed standard of performance for new sources required by section 1316 of this title, or any proposed toxic effluent standard required by section 1317 of this title, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

(3) Information so transmitted to the Administrator shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations.

(4) In preparing information for transmittal, the Committee shall avail itself of the technical and scientific services of any Federal agency, including the United States Geological Survey and any national environmental laboratories which may be established.

(c) Secretary; legal counsel; compensation

(1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary. The Committee shall appoint such other employees as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum

rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

(d) Quorum; special panel

Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

(e) Rules

The Committee is authorized to make such rules as are necessary for the orderly transaction of its business. (June 30, 1948, ch. 758, title V, § 515, as added October 12, 1972, Pub. L. 92-500, § 2, 86 Stat. 894.)

§ 1375. Reports to Congress

(a) Implementation of chapter objectives; status and progress of programs

Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this chapter, on measures taken toward implementing the objective of this chapter, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 1252 of this title, areawide plans under section 1288 of this title, basin plans under section 1289 of this title, and plans under section 1313(e) of this title; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs, including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under this chapter during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this chapter; (7) a summary of the results of the survey required to be taken under section 1290 of this title; (8) his activities including recommendations under sections 1259 through 1261 of this title; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

(b) Detailed estimates and comprehensive study on costs; State estimates, survey form

(1) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agen-

cies, shall make (A) a detailed estimate of the cost of carrying out the provisions of this chapter; (B) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this chapter or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA-1, O.M.B. No. 158-R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 1281(g)(2)(A) of this title and water quality standards established pursuant to section 1313 of this title, and all costs of treatment works as defined in section 1292(2) of this title, including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

* * * * *

(June 30, 1948, ch. 758, title V, § 516, as added October 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 895, and amended January 2, 1974, Pub. L. 93-243, § 4, 87 Stat. 1069; December 27, 1977, Pub. L. 95-217, §§ 70-72, 91 Stat. 1608.)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to the programs and activities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

Legislative History of 1972 Amendments. S. 2770, Public Law 92-500 in the 92d Congress. Reported in Senate from Public Works October 28, 1971; S. Rept. No. 414. Passed Senate November 2, 1971. Passed House, amended, March 29, 1972. Senate asks for a conference April 12, 1972. House agrees to a conference May 1, 1972. Conference report filed September 28, 1972; H.R. Rept. No. 1465. Conference report filed September 28, 1972; S. Rept. No. 1236. House agrees to conference report October 4, 1972. Senate agrees to conference report October 4, 1972. Vetoed October 17, 1972. In Senate, passed over Presidential veto October 17, 1972. In House, passed over Presidential veto October 18, 1972. Companion bill H.R. 11896 reported in House from Public Works March 11, 1972; H.R. Rept. No. 911.

RECLAMATION PROJECT AUTHORIZATION ACT OF 1972

An act to authorize the Secretary of the Interior to construct, operate, and maintain various Federal reclamation projects, and for other purposes. (Act of October 20, 1972, Public Law 92-514, 86 Stat. 964)

[Sec. 1. Short title.]—This Act shall be known as the Reclamation Project Authorization Act of 1972. (86 Stat. 964)

TITLE I

CLOSED BASIN DIVISION, SAN LUIS VALLEY PROJECT, COLORADO

Sec. 101. [Authorization of closed basin division, including channel rectification of Rio Grande—Purposes—Construction in stages—Compliance with water quality standards.]—The Secretary of the Interior is authorized to construct, operate, and maintain the closed basin division, San Luis Valley project, Colorado, including channel rectification of the Rio Grande between the uppermost point of discharge into the river of waters salvaged by the project, and the Colorado-New Mexico State line, so as to provide for the carriage of water so salvaged without flooding of surrounding lands, to minimize losses of waters through evaporation, transpiration, and seepage, and to provide a conduit for the reception of waters salvaged by drainage projects undertaken in the San Luis Valley below Alamosa, Colorado, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), and as otherwise provided in this Act, for the principal purposes of salvaging, regulating, and furnishing water from the closed basin area of Colorado; transporting such water into the Rio Grande; making water available for fulfilling the United States obligation to the United States of Mexico in accordance with the treaty dated May 21, 1906 (34 Stat. 2953); furnishing irrigation water, industrial water, and municipal water supplies to water deficient areas of Colorado, New Mexico, and Texas through direct diversion and exchange of water; establishing the Mishak National Wildlife Refuge and furnishing a water supply for the operation of the Mishak National Wildlife Refuge and the Alamosa National Wildlife Refuge and for conservation and development of other fish and wildlife resources; providing outdoor recreational opportunities; augmenting the flow of the Rio Grande; and other useful purposes, in substantial accordance with the engineering plans set out in the report of the Secretary of the Interior on this project as modified by the plans shown in the Definite Plan Report of the Water and Power Resources Service, dated November 1979: *Provided*, That no wells of the project, other than observation wells, shall be permitted to penetrate the aquiclude, or first confining clay layer.

(b) Construction of the project may be undertaken in such units or stages as in the determination of the Secretary will best serve project requirements

and meet water needs: *Provided*, That construction of each of the successive units or stages after stage 1 of said project shall be undertaken only with the consent of the Colorado Water Conservation Board and the Rio Grande Water Conservation District of the State of Colorado.

(c) The closed basin division, San Luis Valley project, Colorado, shall be operated in such manner that the delivery of water to the river and return flows of water will not cause the Rio Grande system to be in violation of water quality standards promulgated pursuant to the Water Quality Act of 1965 (79 Stat. 903). (86 Stat. 964; Act of October 3, 1980, § 6, 94 Stat. 1505)

EXPLANATORY NOTES

1980 Amendment. Section 6 of the Act of October 3, 1980 (Public law 96-375, 94 Stat. 1505) added the words "as modified by the plans shown in the Definite Plan Report of the Water and Power Resources, dated November 1979" preceding the proviso in subsection (a). The 1980 Act appears in Volume IV in chronological order.

Reference in the Text. The treaty of May 21, 1906 (34 Stat. 2953), referred to in subsection (a) of the text, is the Rio Grande Convention with Mexico. The obligation of the United States referred to in the text is established by Article I of the Convention, and requires the United States to deliver annually to Mexico 60,000 acre-feet of water via the Rio Grande. The Convention appears in Volume I at page 114.

Reference in the Text. The Water Quality Act of 1965, referred to in subsection (c) of the text, amended in part the Federal Water Pollution Control Act of July 9, 1956 (70 Stat. 498). The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

Sec. 102. [Control system of observation wells—Protection of water table and artesian wells.]—(a) Prior to commencement of construction of any part of the project, except channel rectification, there shall be incorporated into the project plans a control system of observation wells, which shall be designed to provide positive identification of any fluctuations in the water table of the area surrounding the project attributable to operation of the project or any part thereof. Such control system, or so much thereof as is necessary to provide such positive identification with respect to any stage of the project, shall be installed concurrently with such stage of the project.

(b) The Secretary shall operate project facilities in a manner that will not cause the water table available for any irrigation or domestic wells in existence outside the project boundary prior to the construction of the project to drop more than two feet and in a manner that will not cause reduction of artesian flows in existence prior to the construction of the project. (86 Stat. 964; Act of October 3, 1980, § 6, 94 Stat. 1505)

EXPLANATORY NOTE

1980 Amendment. Section 6 of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505) added to subsection (b) the words "outside the project boundary" after the words "domestic wells in existence". The 1980 Act appears in Volume IV in chronological order.

Sec.103. [Operating committee.]—There is hereby established an operating committee consisting of one member appointed by the Secretary, one member appointed by the Colorado Water Conservation Board, and one member appointed by the Rio Grande Water Conservation District, which is authorized to determine from time to time whether the requirements of section 102 of this Act are being complied with. The committee shall inform the Secretary if the operation of the project fails to meet the requirements of section 102 or adversely affects the beneficial use of water in the Rio Grande Basin in Colorado as defined in article I(c) of the Rio Grande compact (53 Stat. 785). Upon receipt of such information the Secretary shall modify, curtail, or suspend operation of the project to the extent necessary to comply with such requirements or eliminate such adverse effect. (86 Stat. 965)

EXPLANATORY NOTE

Reference in the Text. The Rio Grande Basin in Colorado as defined in Article I(c) of the Rio Grande Compact (53 Stat. 785), referred to in the text, means "all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado." The Closed Basin in Colorado is defined as "that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lake and adjacent territory, and do not normally contribute to the flow of the Rio Grande." Article I(c) of the Rio Grande Compact appears in Volume I at page 622.

Sec. 104. [Priority of uses of water—Project costs nonreimbursable except as determined by Secretary within ability to pay.]—(a) Except as hereinafter provided, project costs shall be nonreimbursable.

(b) After the project or any phase thereof has been constructed and is operational, the Secretary shall make water available in the following listed order of priority:

(1) To assist in making the annual delivery of water at the gaging station on the Rio Grande near Lobatos, Colorado, as required by article III of the Rio Grande compact: *Provided*, That the total amount of water delivered for this purpose shall not exceed an aggregate of six hundred thousand area-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of January next succeeding the year in which the Secretary determined that the project authorized by this Act is operational.

(2) To maintain the Alamosa National Wildlife Refuge and the Mishak National Wildlife Refuge: *Provided,* That the amount of water delivered to the Alamosa National Wildlife Refuge shall not exceed five thousand three hundred acre-feet annually, and the water delivered to the Mishak National Wildlife Refuge shall not exceed twelve thousand five hundred acre-feet annually.

(3) To apply to the reduction and elimination of any accumulated deficit in deliveries by Colorado as is determined to exist by the Rio Grande Compact Commission under article VI of the Rio Grande compact at the end of the compact water years in which the Secretary first determines the project to be operational.

(4) For irrigation or other beneficial uses in Colorado: *Provided,* That no water shall be delivered until agreements between the United States and water users in Colorado, or the Rio Grande Water Conservation District acting for them, have been executed providing for the repayment of such costs as in the opinion of the Secretary are appropriate and within the ability of the users to pay. (86 Stat. 965)

NOTE OF OPINION

1. Priority of water use

It is clear from both the plain language and the legislative history of the Reclamation Project Authorization Act of 1972 that section 104(b) requires that, in times of water shortage insufficient to meet all the needs of the project, the first 60,000 acre-feet per year be allocated to fulfill the treaty obligation of Article III of the Rio Grande Compact. Only after this requirement is met will water be available for the lower priority Alamosa and Mishak National Wildlife Refuges, up to the statutory maximum. Memorandum of Associate Solicitor Good to Field Solicitor, Amarillo, December 16, 1981, in re Closed Basin Division, San Luis Valley Project, Colorado.

Sec. 105. [Conveyance of State lands—Limitations on acquisition of private lands.]—Construction of the project shall not be started until the State of Colorado agrees that it will, as its participation in the project, convey to the United States easements and rights-of-way over lands owned by the State that are needed for wells, channels, laterals, and wildlife refuge areas, as identified in the project plan. Acquisition of privately owned land shall, where possible and consistent with the development of the project, be restricted to easements and rights-of-way in order to minimize the removal of land from local tax rolls. (86 Stat. 965)

NOTE OF OPINION

1. Acceptance of less than fee title

Section 105 authorizes the United States to accept less than fee title for Colorado state lands needed for wells, channels, laterals and wildlife refuge areas as identified in the project plan, as the Act plainly contemplates that Colorado may retain ownership of the lands involved by specifying that "[T]he State of Colorado agrees that it will. . .convey to the United States easements and rights-of-way over lands owned by the State. . . ." Memorandum of Acting Associate Solicitor Elliott, Energy and Resources, to Field Solicitor, Amarillo, February 19, 1981, in re Closed Basin Division, San Luis Valley Project.

Sec. 106. [Fish and wildlife and recreation.]—Conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connnection with the closed basin division of the San Luis Valley project works authorized by this Act shall be accordance with the provisions of the Federal Water Project Recreation Act (70 Stat. 213). (86 Stat. 966)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, is found at 79 (not 70) Stat. 213, and appears in Volume III at page 1820.

NOTES OF OPINIONS

Acceptance of less than fee title 1
Construction with other laws 2

1. Acceptance of less than fee title

The Reclamation Project Authorization

Act of 1972 authorizes the acquisition of less than fee title in Colorado State-owned lands taken for recreational areas, as section 106 of the Act incorporates by reference the Federal Water Project Recreation Act, which provides, in section 7(a), for the acquisition of "lands or interests therein." However, as department regulations expressly require that fee title be obtained for lands needed for outdoor recreation, the department should give notice through the Federal Register if it intends to deviate from this policy. Memorandum of Associate Solicitor Good to Field Solicitor, Amarillo, December 16, 1981 in re Closed Basin Division, San Luis Valley Project, Colorado,

2. Construction with other laws

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

Sec. 107. [Transfer of care, operation, and maintenance of project works.]—The Secretary is authorized to transfer to the State of Colorado or to any qualified agency or political subdivision of the State, or to a water users' organization, responsibility for the care, operation, and maintenance of the project works, or any part thereof. The agency or organization assuming such obligation shall obligate itself to operate the project works in accordance with regulations prescribed by the Secretary. (86 Stat. 966)

Sec. 108. [Rio Grande compact preserved.]—Nothing contained in this Act shall be construed to abrogate, amend, modify, or be in conflict with any provisions of the Rio Grande compact; or to shift any legal burden of delivery from the Rio Grande or the Conejos River to the closed basin. (86 Stat. 966)

Sec. 109. [Authorization of appropriations.]—There is hereby authorized to be appropriated for construction of the closed basin division of the San Luis Valley project the sum of $18,246,000 (April 1972 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, and such additional sums as may be required for operation and maintenance of the project. (86 Stat. 966)

EXPLANATORY NOTE

Codification Omitted. Title I of this Act originally was codified at 43 U.S.C. §§ 615aa to 615iii but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

TITLE II

BRANTLEY PROJECT, PECOS RIVER BASIN, NEW MEXICO

Sec. 201. [Authorization of Brantley Project—Purposes—Secretary of the Interior to operate Alamogordo Reservoir—Protection of water rights in Pecos River.]—The Secretary of the Interior is authorized to construct, operate, and maintain the Brantley project, Pecos River Basin,

New Mexico, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and the provisions of this Act and the plan set out in the report of the Secretary on this project, which such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purposes of irrigation, flood control, fish and wildlife and recreation, and for the elimination of the hazards of failure of McMilland and Avalon Dams: *Provided*, That the Secretary of the Interior shall operate the existing Alamogordo Dam and Reservoir unit: *And provided further*, That the Secretary of the Interior shall familiarize himself with the water rights of appropriators of water from the Pecos River and shall promulgate criteria for the operation of the Brantley project and other irrigation storage projects on the Pecos River in the State of New Mexico that will preclude any detrimental effect on water rights in the Pecos River so that appropriators of water will not be adversely and unreasonably affected by such operations. (86 Stat. 966)

EXPLANATORY NOTES

Name of Dam Misspelled. The text erroneously includes a "d" on the end of McMillan".

Cross Reference, Name of Dam and Reservoir changed. Alamogordo Dam and Reservoir, referred to in the text, were redesignated Sumner Dam and Lake Sumner, respectively, by the Act of October 17, 1974 (Public Law 93-447, 88 Stat. 1363). The 1974 Act appears in Volume IV in chronological order.

Sec. 202. [Fish and wildlife and recreation.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Brantley project shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). (86 Stat. 966)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 203. [Pecos River Compact preserved.]—Nothing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Pecos River Compact, 1948, consented to by the Congress in the Act of June 9, 1949 (63 Stat. 159). (86 Stat. 967)

EXPLANATORY NOTE

Reference in the Text. The Pecos River Compact (63 Stat. 159), referred to in the text, appears in Volume II at page 942.

Sec. 204. [Safety of dams and flood control costs nonreimbursable—Recreation and fish and wildlife costs governed by Recreation Act.]—The costs allocated to flood control and the safety of dams purposes of the project shall be nonreimbursable and nonreturnable. The repayment of costs allocated to recreation and fish and wildlife enhancement shall be in

accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). (86 Stat. 967)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 205. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Brantley project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction on the project is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (86 Stat. 967)

Sec. 206. [Authorization of appropriations.]—There is hereby authorized to be appropriated for construction of the Brantley project the sum of $172,728,000 (based on April 1979 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved and, in addition thereto, sums as may be required for operation and maintenance of the project. (86 Stat. 967; Act of October 3, 1980, § 11, 94 Stat. 1505)

EXPLANATORY NOTES

Codification Omitted. Title II of this Act originally was codified at 43 U.S.C. 615jjj to 615ooo but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

1980 Amendment. Section 11 of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505), amended section 206 by deleting after the words "the sum of" the words "$45,605,000 (based on July 1971 prices)" and inserting in lieu thereof the words "$172,728,000 (based on April 1979 prices)". The 1980 Act appears in Volume IV in chronological order.

TITLE III

SALMON FALLS DIVISION, UPPER SNAKE RIVER PROJECT, IDAHO

Sec. 301. [Authorization of Salmon Falls division—Principal works—Location of wells.]—For the primary purposes of providing irrigation water supplies and the enhancement of fish and wildlife resources, and other purposes, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain the Salmon Falls division, Upper Snake River project, Idaho. The principal works of the divisions shall consist of the Milner pumping plant, the Milner-Salmon Falls Canal, relift pumping stations, water distribution facilities, wells to provide supplemental water, drainage facilities, and related works. The wells to provide supplemental water, authorized by this Act, shall be so located that the irrigation water produced therefrom can

be delivered to the lands of the Salmon Falls division without the requirement for water rights exchange agreements between the Salmon River Canal Company and the North Side Canal Company of Jerome, Idaho.(86 Stat. 967)

Sec. 302. [Exchanges of water—Water rights.]—Any exchanges of water which may be required in connection with the operation of the division authorized by this title shall be made in conformity with applicable State law and shall in no way jeopardize, diminish, or otherwise alter contractual rights and obligations now in existence or water rights acquired under State law, and shall be without prejudice to, but in enjoyment of, the rights of the appropriator participating in the exchange as a use under his original appropriation. Existing water users shall bear no additional costs as a consequence of any exchange in their service area. (86 Stat. 967)

Sec. 303. [Irrigation repayment contracts—Fifty year period—Ability to repay.]—Irrigation repayment contracts shall provide, with respect to any contract unit, for repayment of the irrigation construction costs assigned to the irrigators for repayment over a period of not more than fifty years, exclusive of any development period authorized by law. Construction costs allocated to irrigation beyond the ability of irrigators to repay shall be charged to and returned to the reclamation fund in accordance with the provisions of section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707). (86 Stat. 967)

EXPLANATORY NOTE

Reference in the Text. Section 2 of the Act of June 14, 1966, as amended, referred to in the text, establishes a policy for assistance from the Federal Columbia River power system to reclamation projects in the Pacific Northwest. The 1966 Act appears in Volume III at page 1870.

Sec. 304. [Fish and Wildlife.]—The provision of lands, facilities, and project modifications which furnish fish and wildlife benefits in connection with the Salmon Falls division shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213). (86 Stat. 968)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 305. [Irrigation pumping power.]—Power and energy required for irrigation water pumping for the Salmon Falls division shall be made available by the Secretary from the Federal Columbia River power system at charges determined by him. (86 Stat. 968)

Sec. 306. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Salmon Falls division shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction on the division is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public ob-

ligations which are neither due nor callable for fifteen years from date of issue. (86 Stat. 968)

Sec. 307. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949 (63 Stat. 1051; 7 U.S.C. 1421), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301 (b)(10) of the Agricultural Adjustment Act of 1938 (62 Stat. 1251; 7 U.S.C. 1301), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (86 Stat. 968)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. §1428(c). The definition of "normal supply" in section 301 (b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. §1301(b)(10). Neither Act appears herein.

Sec. 308. [Authorization of appropriations.]—There is hereby authorized to be appropriated for construction of the works herein authorized and for the acquisition of the necessary land and rights the sum of $62,258,000 (January 1972 prices), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of said division. (86 Stat. 968)

EXPLANATORY NOTE

Codification Omitted. Title III of this Act originally was codified at 43 U.S.C. 615ppp to 615www but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

TITLE IV

O'NEILL UNIT, PICK-SLOAN MISSOURI BASIN PROGRAM, NEBRASKA

Sec. 401. [Reauthorization of O'Neill unit—Purposes—Principal features.]—The O'Neill unit, heretofore authorized as an integral part of the Pick-Sloan Missouri Basin program by the Act of August 21, 1954 (68 Stat. 757), is hereby reauthorized as a unit of that project for the purposes of providing irrigation water for seventy-seven thousand acres of land, flood control, fish and wildlife conservation and development, public outdoor recreation, and for other purposes. The construction, operation, and maintenance of the O'Neill unit shall be subject to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal features of the unit shall include Norden

Dam and Reservoir, related canals, a pumping plant, distribution systems, and other necessary works needed to effect the aforesaid purposes. (86 Stat. 968)

EXPLANATORY NOTE

Reference in the Text. The Act of August 21, 1954, referred to in the text, appears in Volume II at page 1186.

Sec. 402. [Fish and wildlife and recreation.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the O'Neill unit shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213). (86 Stat. 969)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 403. [Integration with Pick-Sloan program.]—The O'Neill unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented. (86 Stat. 969)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in the text, authorized the comprehensive development of the Missouri River Basin. Section 9 of the 1944 Act appears in Volume II at page 806.

Sec. 404. [Interest rate.]—The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable to the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (86 Stat. 969)

Sec. 405. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949 (63 Stat. 1051; 7 U.S.C. 1421 note), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301 (b)(10) of the Agricultural Adjustment Act of 1938 (62 Stat. 1251; 7 U.S.C. 1301), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (86 Stat. 969)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C. §1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 406. [Authorization of appropriations.]—There is hereby authorized to be appropriated for construction of the O'Neill unit as authorized in this Act the sum of $113,300,000 (based upon January 1972 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit. (86 Stat. 969)

EXPLANATORY NOTE

Codification Omitted. Title IV of this Act originally was codified at 43 U.S.C. §§ 615cccc but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

TITLE V

NORTH LOUP DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM, NEBRASKA

Sec. 501. [Reauthorization of North Loup division—Purposes—Principal features.]—The North Loup division heretofore authorized as an integral part of the Missouri River Basin project by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented, is hereby reauthorized as a unit of that project for the purposes of providing irrigation water for fifty-three thousand acres of land, enhancement of outdoor recreation opportunities, conservation and development of fish and wildlife resources, and for other purposes. The principal features of the North Loup division shall include Calamus and Davis Creek Dams and Reservoirs, Kent diversion works; irrigation canals; pumping facilities; associated irrigation distribution and drainage works; facilities for public outdoor recreation and fish and wildlife developments; and other necessary works and facilities to effect its purpose. (86 Stat. 969)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in the text, authorized the comprehensive development of the Missouri River Basin. Section 9 of the 1944 Act appears in Volume II at page 806.

Sec. 502. [Interest rate.]—The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed

average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (86 Stat. 969)

Sec. 503. [Fish and wildlife and recreation.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the North Loup division shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213). (86 Stat. 970)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 504. [Integration with other Federal works.]—The North Loup division shall be integrated, physically and financially, with the other Federal works in the Missouri Basin constructed or authorized to be constructed under the comprehensive plans approved by section 9 of the Act of December 22, 1944 (58 Stat. 891), as amended and supplemented. (86 Stat. 970)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, referred to in the text, authorized the comprehensive development of the Missouri River Basin. Section 9 of the 1944 Act appears in Volume II at page 806.

Sec. 505. [Water diversion limited.]—The North Loup division shall be so constructed and operated that no water shall be diverted from either the Calamus or the North Loup Rivers for any use by the division during the months of July and August each year; and no water shall be diverted from said rivers during the month of September each year whenever during said month there is sufficient water available in the division storage reservoirs to deliver the design capacity of the canals receiving water from said reservoirs. (86 Stat. 970)

Sec. 506. [Surplus crops.]—For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949 (63 Stat. 1051; 7 U.S.C. 1421 note), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301 (b) (10) of the Agricultural Adjustment Act of 1938 (62 Stat. 1251; 7 U.S.C. 1301), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (86 Stat. 970)

EXPLANATORY NOTE

References in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in the text, is found at 63 Stat. 1056, 7 U.S.C.

§1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in the text, is found at 62 Stat. 1251, 7 U.S.C. §1301(b)(10). Neither Act appears herein.

Sec. 507. [Authorization of appropriations.]—There is hereby authorized to be appropriated for construction of the North Loup division as authorized in this Act the sum of $79,500,000 (based upon January 1972 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the division. (86 Stat. 970)

EXPLANATORY NOTES

Codification Omitted. Title V of this Act originally was codified at 43 U.S.C. §§ 615dddd to 615jjjj but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. S. 520, Public Law 92-514 in the 92d Congress. Reported in Senate from Interior and Insular Affairs June 30, 1972; S. Rept. No. 947. Passed Senate July 19, 1972. Passed House, amended, September 27, 1972. Senate agrees to House amendments October 5, 1972. Companion bill H.R. 16012 reported in House from Interior and Insular Affairs September 6, 1972; H.R. Rept. No. 1380.

AMERICAN-MEXICAN BOUNDARY TREATY ACT OF 1972

An act to facilitate compliance with the treaty between the United States of America and the United Mexican States, signed November 23, 1970, and for other purposes. (Act of October 25, 1972, Public Law 92-549, 86 Stat. 1161)

[Sec. 1. Short title.]—This Act may be cited as the "American-Mexican Boundary Treaty Act of 1972". (86 Stat. 1161; 22 U.S.C. § 277d-34 note)

TITLE I—AUTHORIZATION FOR CARRYING OUT TREATY PROVISIONS

Sec. 101. [Duties and powers of United States Commissioner.]—In connection with the treaty between the United States of America and the United Mexican States to resolve pending boundary differences and maintain the Rio Grande and the Colorado River as the international boundary between the United States of America and the United Mexican States, signed November 23, 1970 (hereafter in this Act referred to as the "treaty"), the Secretary of State, acting through the United States Commissioner, International Boundary and Water Commission, United States, and Mexico (hereafter in this Act referred to as the "Commissioner"), is authorized—

(1) to conduct technical and other investigations relating to—

(A) the demarcation, mapping, monumentation, channel relocation, rectification, improvement, stabilization, and other matters relating to the preservation of the river boundaries between the United States and Mexico;

(B) the establishment and delimitation of the maritime boundaries in the Gulf of Mexico and in the Pacific Ocean;

(C) water resources; and

(D) the sanitation and the prevention of pollution;

(2) to acquire by donation, purchase, or condemnation, all lands or interests in lands required—

(A) for transfer to Mexico as provided in the treaty;

(B) for construction of that portion of new river channels and the adjoining levees in the territory of the United States;

(C) to preserve the Rio Grande and the Colorado River as the boundary by preventing the construction of works which may cause deflection or obstruction of the normal flow of the rivers or of their floodflows; and

(D) for relocation of any structure or facility, public or private, the relocation of which, in the judgment of the Commissioner, is necessitated by the project; and

(3) to remove, modify, or repair the damages caused to Mexico by works constructed in the United States which the International Boundary

and Water Commission, United States and Mexico, as determined have an adverse effect on Mexico, or to compensate Mexico for such damages. (86 Stat. 1161; 22 U.S.C. § 277d-34)

EXPLANATORY NOTE

International Boundary and Water Commission. The International Boundary Commission was created originally 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 in Volume II at page 751.

Sec. 102. [Construction authorized—Relocation of property—Transfer of works.]—The Commissioner is authorized—

(1) to construct, operate, and maintain all works provided for in the treaty and title I of this Act;

(2) to enter into contracts with the owners of properties to be relocated whereby such owners undertake to perform, at the expense of the United States, any or all operations involved in such relocations; and

(3) to turn over the operation and maintenance of any works referred to in paragraph (1) of this section to any Federal agency, or any State, county, municipality, district, or other political subdivision within which such works may be situated, in whole or in part, upon such terms, conditions, and requirements as the Commissioner may deem appropriate. (86 Stat. 1161; 22 U.S.C. § 277d-35)

Sec. 103. [Disposal of land in excess of requirements.]—Notwithstanding any other provision of law, the Commissioner is authorized to dispose of by warranty deed, or otherwise, any land acquired by him on behalf of the United States, or obtained by the United States pursuant to treaty between the United States and Mexico, and not required for project purposes, under procedures to be formulated by the Commissioner, to adjoining landowners at such price as he considers fair and equitable, and, if not so disposed of, to turn such land over to the General Services Administration for disposal under the provisions of the Federal Property and Administrative Services Act of 1949. (86 Stat. 1162; 22 U.S.C. § 277d-36)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), relating to the disposal of surplus property, appear in Volume II at page 956.

Sec. 104. [Boundary determination—Commissioner's decision final.]—When a determination must be made under the treaty whether to permit a new channel to become the boundary, or whether or not to restore a river to its former channel, or whether, instead of restoration, the Governments should undertake a rectification of the river channel, the Commissioner's decision, approved by the Secretary of State, shall be final so far as the United States is concerned, and the Commissioner is authorized

to construct or arrange for the construction of such works as may be required to give effect to that decision. (86 Stat. 1162; 22 U.S.C. § 277d-37)

Sec. 105. [Jurisdiction over acquired land.]—Land acquired or to be acquired by the United States of America in accordance with the provisions of the treaty, including the tract provided for in section 106, shall become a geographical part of the State to which it attaches and shall be under the civil and criminal jurisdiction of such State, without affecting the ownership of such land. The addition of land and the ceding of jurisdiction to a State shall take effect upon acceptance by such State. (86 Stat. 1162; 22 U.S.C. § 277d-38)

Sec. 106. [Land acquired from Mexico—Department of the Interior to administer as a national wildlife refuge.]—Upon transfer of sovereignty from Mexico to the United States of the 481.68 acres of land acquired by the United States from Mexico near Hidalgo-Reynosa, administration over the portion of that land which is determined by the Commissioner not to be required for the construction and maintenance of the relocated river channel shall be assumed by the Department of the Interior; and the Department of the Interior, Fish and Wildlife Service, Bureau of Sport Fisheries and Wildlife, is authorized to plan, establish, develop, and administer such portion of the acquired lands as a part of the national wildlife refuge system. (86 Stat. 1162; 22 U.S.C. § 277d-39)

Sec. 107. [Section 322 of Tariff Act of 1930 amended.]—(a) The heading of section 322 of the Tariff Act of 1930 (19 U.S.C. 1322) is amended by inserting immediately before the period at the end thereof the following: "**:UNITED STATES-MEXICO BOUNDARY TREATY OF 1970**".

(b) Subsection (b) of such section 322 is amended by striking out "and" at the end of clause (2), by striking out the period at the end of clause (3) and inserting in lieu thereof "; and", and by adding at the end thereof the following new clause:

> "(4) personal property reasonably related to the use and enjoyment of a separated tract of land as described in article III of the Treaty To Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado Rivers as the International Boundary between the United States of America and the United Mexican States signed on November 23, 1970.". (86 Stat. 1162; 19 U.S.C. §1322)

Sec. 108. [Authorization of appropriations.]—There is authorized to be appropriated to the Department of State for the use of the United States section of the International Boundary and Water Commission, United States and Mexico, such sums as may be necessary to carry out the provisions of the treaty and title I of this Act. (86 Stat. 1162; 22 U.S.C. § 277d-40)

TITLE II—PRESIDIO FLOOD CONTROL PROJECT

Sec. 201. [United States—Mexican flood control agreement authorized.]—The Secretary of State, acting through the Commissioner, is hereby authorized to conclude with the appropriate official or officials of the Government of Mexico an agreement for a coordinated plan by the United States and Mexico for international flood control works for protection of

lands along the international section of the Rio Grande in the United States and in Mexico in the Presidio-Ojinaga Valley. (86 Stat. 1163; 22 U.S.C. § 277d-41)

Sec. 202. [Flood control appropriation and construction authorized upon conclusion of agreement—Limitations.]—If an agreement is concluded pursuant to section 201 of title II of this Act, the Commissioner is authorized to construct, operate, and maintain flood control works located in the United States having substantially the characteristics described in "Report on the Flood Control Project Rio Grande, Presidio Valley, Texas", prepared by the United States section, International Boundary and Water Commission, United States and Mexico; and there are hereby authorized to be appropriated to the Department of State for the use of the United States section of the Commission such sums as may be necessary to carry out the provisions of title II of this Act. No part of any appropriation under this section shall be expended for flood control works on any land, site, or easement unless such land, site, or easement has been acquired under the treaty for other purposes or by donation and, in the case of a donation, the title thereto has been approved in accordance with existing rules and regulations of the Attorney General of the United States. (86 Stat. 1163; 22 U.S.C. § 277d-42)

EXPLANATORY NOTE

Legislative History. H.R. 15461, Public Law 92-549 in the 92d Congress. Reported in House from Foreign Affairs August 3, 1972; H.R. Rept. No. 1305. Passed House October 5, 1972. Reported in Senate from Foreign Affairs October 10, 1972; S. Rept. No. 1285. Passed Senate, amended, October 12, 1972. House agrees to Senate amendment October 13, 1972.

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in feasibility investigations of certain potential water resource developments. (Act of October 27, 1972, Public Law 92-577, 86 Stat. 1265)

[New feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following potential water resource developments:

1. Cache Creek project in Comanche, Cotton, Tillman, Jackson, and Kiowa Counties in southwestern Oklahoma.
2. Garrison diversion unit, M&I water facilities, Pick-Sloan Missouri Basin program, in central North Dakota.
3. Oahe unit, M&I water facilities, Pick-Sloan Missouri Basin program in east-central South Dakota.
4. Ventura County Water Management project, California.
5. Tucumcari project in San Miguel County in east-central New Mexico.
6. Uncompahgre project improvement in Montrose and Delta Counties in the vicinity of Montrose and Delta, Colorado.
7. Dominquez Reservoir project in Mesa and Delta Counties, Colorado.
8. Lower James-Fort Randall water diversion proposal of the Pick-Sloan Missouri River Basin program, South Dakota.
9. Three Forks Division, Pick-Sloan Missouri Basin program, in Gallatin and Madison Counties, northwest Montana. (86 Stat. 1265)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Authorization of Studies Required. Section 8 of the Federal Water Project Recreation Act, approved July 9, 1965 (Public Law 89-72, 79 Stat. 213) requires specific authorization by law for the preparation of any feasibility report for a water resource project under Reclamation law. Section 8 of the 1965 Act appears in Volume III at page 1826.

Legislative History. S. 3959, Public Law 92-577 in the 92d Congress. Reported in Senate from Interior and Insular Affairs September 28, 1972; S. Rept. No. 1240. Passed Senate October 2, 1972. Passed House, amended, October 14, 1972. Senate agrees to House amendment with amendment October 14, 1972. Companion bill H.R. 16554 reported in House from Interior and Insular Affairs October 4, 1972; H.R. Rept. No. 1524.

GLEN CANYON NATIONAL RECREATION AREA

An act to establish the Glen Canyon National Recreation Area in the State of Arizona and Utah. (Act of October 27, 1972, Public Law 92-593, 86 Stat. 1311)

[Sec. 1. Glen Canyon National Recreation Area established—Boundary limitation.]—In order to provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the States of Arizona and Utah and to preserve scenic, scientific, and historic features contributing to public enjoyment of the area, there is established the Glen Canyon National Recreation Area (hereafter referred to as the "recreation area") to comprise the area generally depicted on the drawing entitled "Boundary Map Glen Canyon National Recreation Area," numbered GLC-91,006 and dated August 1972, which is on file and available for public inspection in the office of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter referred to as the "Secretary") may revise the boundaries of the recreation area from time to time by publication in the Federal Register of a revised drawing or other boundary description, but the total acreage of the national recreation area may not exceed one million two hundred and thirty-six thousand eight hundred and eighty acres. (86 Stat. 1311; 16 U.S.C. § 460dd)

Sec. 2. [Acquisition of lands—Navajo rights unaffected.]—(a) Within the boundaries of the recreation area, the Secretary may acquire lands and interests in lands by donation, purchase, or exchange. Any lands owned by the States of Utah or Arizona, or any State, political subdivisions thereof, may be acquired only by donation or exchange. No lands held in trust for any Indian tribe may be acquired except with the concurrence of the tribal council.

(b) Nothing in this Act shall be construed to affect the mineral rights reserved to the Navajo Indian Tribe under section 2 of the Act of September 2, 1958 (72 Stat. 1686), or the rights reserved to the Navajo Indian Tribal Council in said section 2 with respect to the use of the lands there described under the heading "PARCEL B". (86 Stat. 1311; 16 U.S.C. § 460dd-1)

EXPLANATORY NOTE

Reference in the Text. Section 2 of the Act of September 2, 1958, referred to in subsection (b) of the text, appears in Volume II at page 1464.

Sec. 3. [Lands withdrawn from entry under mining laws—Removal of minerals—Receipts from lease or sale.]—(a) The lands within the recreation area, subject to valid existing rights, are withdrawn from location, entry, and patent under the United States mining laws. Under such regulations as he deems appropriate, the Secretary shall permit the removal of the nonleasable minerals from lands or interests in lands within the national recreation area in the manner prescribed by section 10 of the Act of August

4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387 et seq.), and he shall permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the Glen Canyon project or on the administration of the national recreation area pursuant to this Act.

(b) All receipts derived from permits and leases issued on lands in the recreation area under the Mineral Leasing Act of February 25, 1920, as amended, or the Act of August 7, 1947, shall be disposed of as provided in the applicable Act; and receipts from the disposition of nonleasable minerals within the recreation area shall be disposed of in the same manner as moneys received from the sale of public lands. (86 Stat. 1311; 16 U.S.C. § 460dd-2)

EXPLANATORY NOTE

References in the Text. The Act of August 4, 1939, as amended, referred to in the text, is the Reclamation Project Act of 1939. Section 10 appears in Volume I at page 656. The Acquired Lands Mineral Leasing Act of August 7, 1947, also referred to in the text, does not appear herein. An extract from the Mineral Leasing Act of February 25, 1920, also referred to in the text, concerning receipts received from permits and leases, appears in Volume I at page 249. That extract, section 35, provides for 52 1/2% of the money received from such permits or leases to be paid into the reclamation fund established by the Reclamation Act of June 17, 1902.

Sec. 4. [Secretary to administer, protect, and develop recreation area—Glen Canyon Dam and Reservoir unaffected.]—The Secretary shall administer, protect, and develop the recreation area in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and with any other statutory authority available to him for the conservation and management of natural resources to the extent he finds such authority will further the purposes of this Act: *Provided, however,* That nothing in this Act shall affect or interfere with the authority of the Secretary granted by Public Law 485, Eighty-fourth Congress, second session, to operate Glen Canyon Dam and Reservoir in accordance with the purposes of the Colorado River Storage Project Act for river regulation, irrigation, flood control, and generation of hydroelectric power. (86 Stat. 1312; 16 U.S.C. § 460dd-3)

EXPLANATORY NOTE

References in the Text. The Act of August 25, 1916, as amended and supplemented, referred to in the text, provides for the administration of the various national parks. The 1916 Act does not appear herein. Public Law 485, Eighty-Fourth Congress (70 Stat. 105, 43 U.S.C. § 620 et seq.), also referred to in the text, is the Colorado River Storage Project Act, which appears in Volume II at page 1248.

Sec. 5. [Hunting, fishing, and trapping.]—The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction

within the boundaries of the recreation area in accordance with applicable laws of the United States and the States of Utah and Arizona, except that the Secretary may designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, any regulation of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. (86 Stat. 1312; 16 U.S.C. § 460dd-4)

Sec. 6. [Mineral and grazing leases.]—The administration of mineral and grazing leases within the recreation area shall be by the Bureau of Land Management. The same policies followed by the Bureau of Land Management in issuing and administering mineral and grazing leases on other lands under its jurisdiction shall be followed in regard to the lands within the boundaries of the recreation area, subject to the provisions of sections 3(a) and 4 of this Act. (86 Stat. 1312; 16 U.S.C. § 460dd-5)

Sec. 7. [Easements and rights-of-way.]—The Secretary shall grant easements and rights-of-way on a nondiscriminatory basis upon, over, under, across, or along any component of the recreation area unless he finds that the route of such easements and rights-of-way would have significant adverse effects on the administration of the recreation area. (86 Stat. 1312; 16 U.S.C. § 460dd-6)

Sec. 8. [Constructions of roads—Limitations—Report to Congress.]—(a) The Secretary together with the Highway Department of the State of Utah, shall conduct a study of proposed road alinements within and adjacent to the recreation area. Such study shall locate the specific route of a scenic, low-speed road, hereby authorized, from Glen Canyon City to Bullfrog Basin, crossing the Escalante River south of the point where the river has entered Lake Powell when the lake is at the three thousand seven hundred-foot level. In determining the route for this road, special care shall be taken to minimize any adverse environmental impact and said road is not required to meet ordinary secondary road standards as to grade, alinement, and curvature. Turnouts, overlooks, and scenic vistas may be included in the road plan. In no event shall said route cross the Escalante River north of Stephens Arch.

(b) The study shall include a reasonable timetable for the engineering, planning, and construction of the road authorized in section 8(a) and the Secretary of the Interior shall adhere to said timetable in every way feasible to him.

(c) The Secretary is authorized to construct and maintain markers and other interpretive devices consistent with highway safety standards.

(d) The study specified in section 8(a) hereof shall designate what additional roads are appropriate and necessary for full utilization of the area for the purposes of this Act and to connect with all roads of ingress to, and egress from the recreation area.

(e) The findings and conclusions of the Secretary and the Highway Department of the State of Utah, specified in section 8(a), shall be submitted to Congress within two years of the date of enactment of this Act, and shall

include recommendations for any further legislation necessary to implement the findings and conclusions. It shall specify the funds necessary for appropriation in order to meet the timetable fixed in section 8(b). (86 Stat. 1312; 16 U.S.C. § 460dd-7)

Sec. 9. [Report to the President.]—Within two years from the date of enactment of this Act, the Secretary shall report to the President, in accordance with subsections 3(c) and 3(d) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132 (c) and (d)), his recommendations as to the suitability or nonsuitability of any area within the recreation area for preservation as wilderness, and any designation of any such area as wilderness shall be in accordance with said Wilderness Act. (86 Stat. 1313; 16 U.S.C. § 460dd-8)

EXPLANATORY NOTE

References in the Text. Sections 3(c) and 3(d) of the Wilderness Act, referred to in the text, appear in Volume III at page 1778.

Sec. 10. [Authorization of appropriations.]—There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, not to exceed, however, $400,000 for the acquisition of lands and interests in lands and not to exceed $37,325,400 for development. The sums authorized in this section shall be available for acquisition and development undertaken subsequent to the approval of this Act. (86 Stat. 1313; 16 U.S.C. § 460dd-9)

EXPLANATORY NOTE

Legislative History. S. 27, Public Law 92-593 in the 92d Congress. Reported in Senate from Interior and Insular Affairs June 17, 1971; S. Rept. No. 156. Passed Senate June 21, 1971. Passed House, amended, October 13, 1972. Senate agrees to House amendment with amendments October 14, 1972. House agrees to Senate amendments October 14, 1972. Companion bill H.R. 15716 reported in House from Interior and Insular Affairs September 26, 1972; H.R. Rept. No. 1446.

PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1974

[Extracts from] An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1974, and for other purposes. (Act of August 16, 1973, Public Law 93-97, 87 Stat. 318)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

* * * * *

EMERGENCY FUND

[Post Falls Irrigation District—Use of emergency funds.]—For an additional amount for the "Emergency fund", as authorized by the Act of June 26, 1948 (43 U.S.C. 502), . . . *Provided*, That the Post Falls Irrigation District, Rathdrum Prairie Project, Idaho, be eligible for use of emergency funds herein appropriated under the Act of June 26, 1948 (62 Stat. 1052), with repayment to be accomplished under conditions satisfactory to the Secretary of the Interior. (87 Stat. 323)

EXPLANATORY NOTE

Reference in the Text. The Act of June 26, 1948, referred to in the text, establishes an emergency fund to assure continuous operation of irrigation and power systems. The 1948 Act appears in Volume II at page 891.

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1974". (87 Stat. 329)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 8947, Public Law 93-97 in the 93d Congress. H.R. Rept. No. 93-327. S. Rept. No. 93-338. H.R. Rept. No. 93-409 (conference report).

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in feasibility investigation of certain potential water resource developments. (Act of October 9, 1973, Public Law 93-122, 87 Stat. 448)

[New feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following potential water resource developments:

1. Hood-Clay unit, American River division, Central Valley project, in Sacramento County and San Joaquin County, California;
2. McGee Creek Reservoir in Atoka County in southeastern Oklahoma;
3. Moorehead unit, Powder division, Pick-Sloan Missouri Basin program, on the Powder River in Powder River County, Montana, and Campbell County, Wyoming; and
4. Geary project on the Canadian River in Blaine and Custer Counties, Oklahoma. (87 Stat. 448)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Authorization of Studies Required. Section 8 of the Federal Water Project Recreation Act (Public Law 89-72, 79 Stat. 213) requires specific authorization by law for the preparation of any feasibility report for a water resource project under Reclamation law. Section 8 appears in Volume III at page 1826.

Legislative History. S. 2075, Public Law 93-122 in the 93d Congress. Reported in Senate from Interior and Insular Affairs July 24, 1973; S. Rept. No. 93-342. Passed Senate July 26, 1973. Passed House, amended, September 13, 1973. Senate agrees to House amendments September 25, 1973. Companion bill H.R. 6576 reported in House from Interior and Insular Affairs July 18, 1973; H.R. Rept. No. 93-382.

RELIEF OF ADLER CONSTRUCTION COMPANY

An act for the relief of Harold C. and Vera L. Adler, doing business as the Adler Construction Company. (Act of October 18, 1973, Private Law 93-8; 87 Stat. 1099)

[Payment in settlement of claims authorized—Agent's or attorney's fee limited.]—(a) In accordance with the opinion, findings of fact, and conclusions of the trial commissioner in United States Court of Claims Congressional Reference Case Numbered 5-70, entitled "Adler Construction Company against The United States," filed October 24, 1972, the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Adler Construction Company of Littleton, Colorado, the sum of $300,000, in full satisfaction of all claims by such company against the United States for compensation for losses sustained by such company in connection with a contract between such company and the Department of the Interior, Bureau of Reclamation, providing for certain work on the Pactola Dam project near Rapid City, South Dakota.

(b) 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. (87 Stat. 1099)

EXPLANATORY NOTE

Legislative History. S. 396, Private Law 93-8 in the 93d Congress. Reported in Senate from Judiciary May 30, 1973; S. Rept. No. 93-178. Passed Senate June 5, 1973. Reported in House from Judiciary August 3, 1973; H.R. Rept. No. 93-447. Passed House October 2, 1973.

ARKANSAS RIVER BASIN COMPACT
[STATES OF ARKANSAS AND OKLAHOMA]

An act to grant the consent of the United States to the Arkansas River Basin compact, Arkansas-Oklahoma. (Act of November 13, 1973, Public Law 93-152, 87 Stat. 569)

[Sec. 1. Consent of Congress granted.]—The consent of Congress is hereby given to the Arkansas River Basin compact, Arkansas-Oklahoma, 1970, as ratified by the States of Arkansas and Oklahoma as follows:

"ARTICLE I

"The major purposes of this Compact are:

"A. To promote interstate comity between the States of Arkansas and Oklahoma;

"B. To provide for an equitable apportionment of the waters of the Arkansas River between the States of Arkansas and Oklahoma and to promote the orderly development thereof;

"C. To provide an agency for administering the water apportionment agreed to herein;

"D. To encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin; and

"E. To facilitate the cooperation of the water administration agencies of the States of Arkansas and Oklahoma in the total development and management of the water resources of the Arkansas River Basin.

"ARTICLE II

"As used in this Compact:

"A. The term 'State' means either State signatory hereto and shall be construed to include any person or persons, entity or agency of either State who, by reason of official responsibility or by designation of the Governor of that State, is acting as an official representative of that State.

"B. The term 'Arkansas-Oklahoma Arkansas River Compact Commission,' or the term 'Commission' means the agency created by this Compact for the administration thereof.

"C. The term 'Arkansas River Basin' means all of the drainage basin of the Arkansas River and its tributaries from a point immediately below the confluence of the Grand-Neosho River with the Arkansas River near Muskogee, Oklahoma, to a point immediately below the confluence of Lee Creek with the Arkansas River near Van Buren, Arkansas, together with the drainage basin of Spavinaw Creek in Arkansas, but excluding that portion of the drainage basin of the Canadian River above Eufaula Dam.

"D. The term 'Spavinaw Creek Sub-basin' means the drainage area of Spavinaw Creek in the State of Arkansas.

"E. The term 'Illinois River Sub-basin' means the drainage area of Illinois River in the State of Arkansas.

"F. The term 'Lee Creek Sub-basin' means the drainage area of Lee Creek in the State of Arkansas and the State of Oklahoma.

"G. The term 'Poteau River Sub-basin' means the drainage area of Poteau River in the State of Arkansas.

"H. The term 'Arkansas River Sub-basin' means all areas of the Arkansas River Basin except the four sub-basins described above.

"I. The term 'water-year' means a twelve-month period beginning on October 1, and ending September 30.

"J. The term 'annual yield' means the computed annual gross runoff from any specified sub-basin which would have passed any certain point on a stream and would have originated within any specified area under natural conditions, without any man-made depletion or accretion during the water year.

"K. The term 'pollution' means contamination or other alterations of the physical, chemical, biological or radiological properties of water or the discharge of any liquid, gaseous, or solid substances into any waters which creates, or is likely to result in a nuisance, or which renders or is likely to render the waters into which it is discharged harmful, detrimental or injurious to public health, safety, or welfare, or which is harmful, detrimental or injurious to beneficial uses of the water.

"ARTICLE III

"A. The physical and other conditions peculiar to the Arkansas River Basin constitute the basis of this Compact, and neither of the States hereby, nor the Congress of the United States by its consent hereto, concedes that this Compact established any general principle with respect to any other interstate stream.

"B. By this Compact, neither State signatory hereto is relinquishing any interest or right it may have with respect to any waters flowing between them which do not originate in the Arkansas River Basin as defined by this Compact.

"ARTICLE IV

"The States of Arkansas and Oklahoma hereby agree upon the following apportionment of the waters of the Arkansas River Basin;

"A. The State of Arkansas shall have the right to develop and use the waters of the Spavinaw Creek Sub-basin subject to the limitation that the annual yield shall not be depleted by more than fifty percent (50%).

"B. The State of Arkansas shall have the right to develop and use the waters of the Illinois River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

"C. The State of Arkansas shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Arkansas, or the equivalent thereof.

"D. The State of Oklahoma shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Oklahoma, or the equivalent thereof.

"E. The State of Arkansas shall have the right to develop and use the waters of the Poteau River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

"F. The State of Oklahoma shall have the right to develop and use the waters of the Arkansas River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

"ARTICLE V

"A. On or before December 31 of each year, following the effective date of this Compact, the Commission shall determine the stateline yields of the Arkansas River Basin for the previous water year.

"B. Any depletion of annual yield in excess of that allowed by the provisions of this Compact shall, subject to the control of the Commission, be delivered to the downstream State, and said delivery shall consist of not less than sixty percent (60%) of the current runoff of the basin.

"C. Methods for determining the annual yield of each of the sub-basins shall be those developed and approved by the Commission.

"ARTICLE VI

"A. Each State may construct, own and operate for its needs water storage reservoirs in the other State: *Provided, however,* That nothing contained in this Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State.

"B. Depletion in annual yield of any sub-basin of the Arkansas River Basin caused by the operation of any water storage reservoir either heretofore or hereafter constructed by the United States or any of its agencies, instrumentalities or wards, or by a State, political subdivision thereof, or any person or persons shall be charged against the State in which the yield therefrom is utilized.

"C. Each State shall have the free and unrestricted right to utilize the natural channel of any stream within the Arkansas River Basin for conveyance through the other State of waters released from any water storage reservoir for an intended downstream point of diversion or use without loss of ownership of such waters: *Provided, however,* That a reduction shall be made in the amount of water which can be withdrawn at point of removal, equal to the transmission losses.

"ARTICLE VII

"The States of Arkansas and Oklahoma mutually agree to:

"A. The principle of individual State effort to abate man-made pollution within each State's respective borders, and the continuing support of both States in an active pollution abatement program;

"B. The cooperation of the appropriate State agencies in the States of Arkansas and Oklahoma to investigate and abate sources of alleged interstate pollution within the Arkansas River Basin;

"C. Enter into joint programs for the identification and control of sources of pollution of the waters of the Arkansas River and its tributaries which are of interstate significance;

"D. The principle that neither State may require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment;

"E. Utilize the provisions of all Federal and State water pollution laws and to recognize such water quality standards as may be now or hereafter established under the Federal Water Pollution Control Act in the resolution of any pollution problems affecting the waters of the Arkansas River Basin.

"ARTICLE VIII

"A. There is hereby created an interstate administrative agency to be known as the 'Arkansas-Oklahoma Arkansas River Compact Commission.' The Commission shall be composed of three Commissioners representing the State of Arkansas and three Commissioners representing the State of Oklahoma, selected as provided below; and, if designated by the President or an authorized Federal agency, one Commissioner representing the United States. The President, or the Federal agency authorized to make such appointments, is hereby requested to designate a Commissioner and an alternate representing the United States. The Federal Commissioner, if one be designated, shall be the Chairman and presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission.

"B. One Arkansas Commissioner shall be the Director of the Arkansas Soil and Water Conservation Commission, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside in the Arkansas River drainage area in the State of Arkansas and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.

"C. One Oklahoma Commissioner shall be the Director of the Oklahoma Water Resources Board, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside within the Arkansas River drainage area in the State of Oklahoma and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms, with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years respectively.

"D. A majority of the Commissioners of each State and the Commissioner or his alternate representing the United States, if they are so designated, must be present to constitute a quorum. In taking any Commission action, each signatory State shall have a single vote representing the majority opinion of the Commissioners of that State.

"E. In the case of a tie vote on any of the Commission's determinations, order, or other actions, a majority of the Commissioners of either State may, upon written request to the Chairman, submit the question to arbitration. Arbitration shall not be compulsory, but on the event of arbitration, there shall be three arbitrators:

"(1) One named by resolution duly adopted by the Arkansas Soil and Water Conservation Commission, or such other State agency as may be hereafter responsible for administering water law in the State of Arkansas; and

"(2) One named by resolution duly adopted by the Oklahoma Water Resources Board, or such other State agency as may be hereafter responsible for administering water law in the State of Oklahoma; and

"(3) The third chosen by the two arbitrators who are selected as provided above.

If the arbitrators fail to select a third within sixty (60) days following their selection, then he shall be chosen by the Chairman of the Commission.

"F. The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact shall be borne equally by the two States and shall be paid by the Commission out of the 'Arkansas-Oklahoma Arkansas River Compact Fund,' initiated and maintained as provided in Article IX(B) (5) below. The States hereby mutually agree to appropriate sums sufficient to cover its share of the expenses incurred in the administration of this Compact, to be paid into said fund. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Such funds shall not be subject to the audit and accounting procedures of the States; however, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audit shall be included in and become a part of the annual report of the Commission, provided by Article IX(B) (6) below. The Commission shall not pledge the credit of either State and shall not incur any obligations prior to the availability of funds adequate to meet the same.

"ARTICLE IX

"A. The Commission shall have the power to:

"(1) Employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

"(2) Enter into contracts with appropriate State or Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records and for the preparation of reports;

"(3) Establish and maintain an office for the conduct of its affairs;

"(4) Adopt and procure a seal for its official use;

"(5) Adopt rules and regulations governing its operations. The procedures employed for the administration of this Compact shall not be subject to any Administrative Procedures Act of either State, but shall

be subject to the provisions hereof and to the rules and regulations of the Commission: *Provided, however,* All rules and regulations of the Commission shall be filed with the Secretary of State of the signatory States.

"(6) Cooperate with Federal and State agencies and political subdivisions of the signatory States in developing principles, consistent with the provisions of this Compact and with Federal and State policy, for the storage and release of water from reservoirs, both existing and future within the Arkansas River Basin, for the purpose of assuring their operation in the best interests of the States and the United States;

"(7) Hold hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact, which orders shall be enforceable upon the request by the Commission or any other interested party in any court of competent jurisdiction within the county wherein the subject matter to which the order relates is in existence, subject to the right of review through the appellate courts of the State of situs. Any hearing held for the promulgation and issuance of orders shall be in the county and State of the subject matter of said hearing;

"(8) Make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of either State, or the United States as may have any interest in or jurisdiction over the subject matter. Findings of fact made by the Commission shall be admissible in evidence and shall constitute prima facie evidence of such fact in any court or before any agency of competent jurisdiction. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to instituting or maintaining any action or proceeding of any kind by a signatory State in any court, or before any tribunal agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions;

"(9) Secure from the head of any department or agency of the Federal or State government such information, suggestions, estimates and statistics as it may need or believe to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed;

"(10) Print or otherwise reproduce and distribute all of its proceedings and reports; and

"(11) Accept, for the purposes of this Compact, any and all private donations and gifts and Federal grants of money.

"B. The Commission shall:

"(1) Cause to be established, maintained and operated such stream, reservoir or other gaging stations as may be necessary for the proper administration of this Compact;

"(2) Collect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact;

"(3) Continue research for developing methods of determining total basin yields;

"(4) Perform all other functions required of it by the Compact and do all things necessary, proper or convenient in the performance of its duties thereunder;

"(5) Establish and maintain the 'Arkansas-Oklahoma Arkansas River Compact Fund,' consisting of any and all funds received by the Commission under the authority of this Compact and deposited in one or more banks qualifying for the deposit of public funds of the signatory States;

"(6) Prepare and submit an annual report to the Governor of each signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

"(7) Prepare and submit to the Governor of each of the States of Arkansas and Oklahoma an annual budget covering the anticipated expenses of the Commission for the following fiscal year; and

"(8) Make available to the Governor or any State agency of either State or to any authorized representative of the United States, upon request, any information within its possession.

"ARTICLE X

"A. The provisions hereof shall remain in full force and effect until changed or amended by unanimous action of the States acting through their Commissioners and until such changes are ratified by the legislatures of the respective States and consented to by the Congress of the United States in the same manner as this Compact is required to be ratified to become effective.

"B. This Compact may be terminated at any time by the appropriate action of the legislature of both signatory States.

"C. In the event of amendment or termination of the Compact, all rights established under the Compact shall continue unimpaired.

"ARTICLE XI

"Nothing in this Compact shall be deemed:

"A. To impair or affect the powers, rights or obligations of the United States, or those claiming under its authority in, over, and to the waters of the Arkansas River Basin;

"B. To interfere with or impair the right or power of either signatory State to regulate within its boundaries of appropriation, use and control of waters within that State not inconsistent with its obligations under this Compact.

"ARTICLE XII

"If any part or application of this Compact should be declared invalid by a court of competent jurisdiction, all other provisions and application of this Compact shall remain in full force and effect.

"ARTICLE XIII

"A. This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each State and consented to by the Congress of the United States, and when the Congressional Act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party, and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto.

"B. The States of Arkansas and Oklahoma mutually agree and consent to be sued in the United States District Court under the provisions of Public Law 87-830 as enacted October 15, 1962, or as may be thereafter amended.

"C. Notice of ratification by the legislature of each State shall be given by the Governor of that State to the Governor of the other State, and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of consent by the Congress of the United States.

"IN WITNESS WHEREOF, the authorized representatives have executed three counterparts hereof such of which shall be and constitute an original, one of which will be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

"Done at the City of Little Rock, State of Arkansas, this 16th day of March A.D., 1970.

"FOR ARKANSAS:
"S. KEITH JACKSON,
"Committee Member.
"JOHN LUCE,
"Committee Member.

"FOR OKLAHOMA:
"GLADE R. KIRKPATRICK,
"Committee Member.
"MILTON CRAIG,
"Committee Member

"Approved: TRIGG TWICHELL, Representative, United States of America.

"Attest: WILLARD B. MILLS, Secretary." (87 Stat. 569)

Sec. 2. [Consent to joinder of United States.]—In order to carry out the purposes of this Act, and the purposes of article XIII of this compact consented to by Congress by this Act, the congressional consent to this compact includes and expressly gives the consent of Congress to have the United States of America named and joined as a party litigant in any litigation in the United States Supreme Court, if the United States of America is an indispensable party to such litigation, and if the litigation arises out of this compact, or its application, and if a signatory State to this compact is a party litigant, in the litigation. (87 Stat. 576).

Sec. 3. [Reservation clause.]—The right to alter, amend, or repeal this Act, is expressly reserved. (87 Stat. 576)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Consent to Negotiate Compact. The consent of Congress for the States of Arkansas and Oklahoma to negotiate this compact was granted by the Act of June

28, 1955 (69 Stat. 184). The 1955 Act appears in Volume II at page 1217.

Legislative History. S. 11, Public Law 93-152 in the 93d Congress. Reported in Senate from Judiciary June 19, 1973; S. Rept. No. 93-227. Rereferred to Public Works June 19, 1973. Reported in Senate from Public Works June 27, 1973; S. Rept. No. 93-268. Passed Senate June 28, 1973. Passed House, amended, September 17, 1973. Senate agrees to House amendments October 30, 1973. Companion bill H.R. 8056 reported in House July 23, 1973; H.R. Rept. No. 93-390.

ENDANGERED SPECIES ACT OF 1973

[Extracts from] An act to provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes. (Act of December 28, 1973, Public Law 93-205, 87 Stat. 884)

[Sec. 1. Short title.] This Act may be cited as the "Endangered Species Act of 1973".

Sec. 2. [Congressional findings and declaration of purposes and policy.]—

(a) The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c)(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. (87 Stat. 884; Act of December 28, 1979, 93 Stat. 1225; Act of October 13, 1982, 96 Stat. 1426; 16 U.S.C. § 1531)

EXPLANATORY NOTES

1982 Amendment. The Act of October 13, 1982 (Public Law 97-304, 96 Stat. 1417) amended subsection (c) by designating the existing provision as paragraph (1) and adding paragraph (2). The 1982 Act does not appear herein.

1979 Amendment. The Act of December 28, 1979 (Public Law 96-159, 93 Stat. 1226) amended subsection (a)(5) by substituting "wildlife, and plants" for "wildlife". The 1979 Act does not appear herein.

NOTES OF OPINIONS

Operation of Reclamation projects 1
Pyramid Lake 2

1. Operation of Reclamation projects

The Secretary of the Interior has an affirmative obligation under section 2(c) of the Endangered Species Act to operate Reclamation projects to conserve endangered and threatened species, and is not limited merely to the obligation under section 7(a) of the Act to avoid actions which might "jeopardize" such species. *Carson-Truckee Water Conservancy District v. Watt*, 549 F. Supp. 704 (D. Nev. 1982). [Editor's note: This holding was affirmed sub nom. *Carson-Truckee Water Conservancy District v. Clark*, 741 F. 2d 257 (9th Cir. 1984), cert. denied, 105 S. Ct. 1842 (1985).]

2. Pyramid Lake

The obligation of the Secretary of the Interior under the Endangered Species Act to release water from Stampede Reservoir to conserve the endangered cui-ui fish population and the threatened Lahontan cutthroat trout of Pyramid Lake takes priority over his obligation under the Washoe Project Act to sell water from the reservoir on a basis that will reimburse the United States for the cost of the project. *Carson-Truckee Water Conservancy District v. Watt*, 537 F. Supp. 106 (D. Nev. 1982) and 549 F. Supp. 704 (D. Nev. 1982). [Editor's note: This holding was affirmed sub nom. *Carson-Truckee Water Conservancy District v. Clark*, 741 F. 2d 257 (1984), cert. denied, 105 S. Ct. 1842 (1985).]

Sec. 3. [Definitions.]—For the purpose of this chapter–

(1) The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and

transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(7) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to

the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) Repealed. Pub. L. 97-304, § 4(b), Oct. 13, 1982, 96 Stat. 1420.

(12) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(14) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(16) The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term "State agency" means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term "United States", when used in a geographical context, includes all States. (87 Stat. 885; Act of July 12, 1976, 90 Stat. 913; Act of November 10, 1978, 92 Stat. 3751; Act of December 28, 1979, 93 Stat. 1225; Act of October 13, 1982, 96 Stat. 1420; 16 U.S.C. § 1532)

EXPLANATORY NOTES

Reference in the Text. The customs laws, referred to in paragraph (10) of the text, are set out in Title 19 of the United States Code. These laws do not appear herein.

Reference in the Text. Reorganization Plan No. 4 of 1970, referred to in paragraph (15) of the text, effective October 3, 1970 (35 F.R. 15627, 84 Stat. 2090), is set out in the Appendix to Title 5 of the United States Code. It does not appear herein.

Sec. 4. (a) [Criteria for determination of endangered or threatened species by Secretary of Interior—Responsibilities of Secretary of Commerce—Designation of critical habitat.]—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable—

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

(b) [Basis for determination of endangered or threatened species—Basis for designation of critical habitat—Secretarial action on petitions received from interested persons concerning endangered or threatened

species—Secretarial action on petition received from interested persons concerning critical habitat—One year time limit from time general notice filed in Federal Register to publish final regulation or to extend time limit or to withdraw proposed regulation—Final regulation designating status of species to be accompanied by final regulation designating critical habit—Exceptions—Emergency regulations—Summary of data on which regulation based to be published with all proposed and final regulations.]—(1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, either of the lists published under subsection (c) the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted, but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from such lists species for which the protections of this Act are no longer necessary,

in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5, United States Code, (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in

which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn

under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that—

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such

summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(c) [Publication in Federal Register of a list of all species determined to be threatened or endangered—Revision from time to time—Status to be reviewed at least every five years.]—(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b).

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

(d) [Secretary of Interior authorized to promulgate regulations for the protection of listed threatened and endangered species.]—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) [Criteria for treating any species as endangered or threatened even though not listed.]—The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f) [Secretary to develop and implement recovery plans for conservation and survival of endangered and threatened species.]—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans (1) shall, to the maximum extent practicable, give priority to those endangered species or threatened species most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other developmental projects or other forms of economic activity, and (2) may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(g) [Agency guidelines—Publication in Federal Register—Scope—Proposals and amendments—Notice and opportunity for comments.]—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(h) [Submission to State agency of justification for regulations inconsistent with State agency's comments or petition.]—If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection the Secretary shall submit to the State agency a written justification

for his failure to adopt regulations consistent with the agency's comments or petition. (87 Stat. 888; Act of July 12, 1976, 90 Stat. 911; Act of November 10, 1978, 92 Stat. 3764, 3766; Act of December 28, 1979, 93 Stat. 1225; Act of October 13, 1982, 96 Stat. 1411; 16 U.S.C. §1533)

EXPLANATORY NOTES

Reference in the Text. Reorganization Plan No. 4 of 1970, referred to in subsection (a)(2) of the text, effective October 3, 1970 (35 F.R. 15627, 84 Stat. 2090), is set out in the Appendix to Title 5 of the United States Code. It does not appear herein.

Reference in the Text. The Federal Advisory Committee Act (Act of October 6, 1972, Public Law 92-463, 86 Stat. 770) as amended, referred to in subsection (f) of the text, is set out in the Appendix to Title 5 of the United States Code. The Act deals with standard policies and procedures to be applied to committees, boards, commissions, councils and similar groups which advise officers and agencies in the Executive Branch of the Federal Government. The Act appears in the Appendix in Supplement I.

Sec. 5. [Secretaries of Interior and Agriculture to implement conservation program—Authorization to acquire lands to carry out program—Funds available to acquire lands.]—(a) The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section. (87 Stat. 889; Act of November 10, 1978, 92 Stat. 3766; 16 U.S.C. § 1534)

EXPLANATORY NOTES

Reference in the Text. The Fish and Wildlife Act of 1956 (Act of August 8, 1956, 70 Stat. 119), referred to in subsection (a) of the text, established the United States Fish and Wildlife Service and set forth the purposes and duties of that organization. The 1956 Act does not appear herein.

Reference in the Text. The Fish and Wildlife Coordination Act of August 12, 1958 (Public Law 85-624, 72 Stat. 563), referred to in subsection (a) of the text, deals with providing more effective integration of fish and wildlife programs with federal water resources developments. The 1958 Act appears in Volume II at page 1434.

Reference in the Text. The Migratory Bird Conservation Act (Act of February 18, 1929, 45 Stat. 1222), as amended, referred to in subsection (a) of the text, established the Migratory Bird Conservation Commission to acquire lands to conserve and preserve migratory birds. The 1929 Act does not appear herein.

Reference in the Text. The Land and Water Conservation Fund Act of 1965 (Act of September 3, 1964, Public Law 88-578, 78 Stat. 897), as amended, referred to in subsection (b) of the text, provides for acquisition and development of land and water areas and recreation facilities. The 1965 Act appears in Volume III at page 1785.

Sec. 6. [Secretary to cooperate with States in carrying out conservation program—Secretary authorized to enter into cooperative agreements with States that have "adequate and active" endangered and threatened species programs—Criteria for determining "adequate and active" programs—Secretary authorized to provide financial assistance to States that have entered into cooperative agreements—Criteria for allocating funds—Provisions of cooperative agreements—All actions subject to periodic review—Conflicts between Federal and State laws—Definition of "establishment period"—Applicability of prohibitions and authorized actions—Secretary authorized to promulgate necessary regulations.]—

(a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935.

(c)(1) In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; or that under the State program—

(i) the requirements set forth in subparagraphs (C), (D), and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 4(a)(1) with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this Act the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) of this title with respect to the taking of any resident endangered or threatened species.

(d)(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 75 percent of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 90 percent whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by co-

operation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g)(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act, and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of

this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States. (87 Stat. 889; Act of December 19, 1977; 91 Stat. 1493; Act of November 10, 1978, 92 Stat. 3762; Act of May 23, 1980, 94 Stat. 348; Act of October 13, 1982; 96 Stat. 1416; 16 U.S.C. § 1535)

Sec. 7. (a) [Federal agencies to utilize their authority to conserve endangered and threatened species—Activities likely to jeopardize the continued existence of any endangered or threatened species not to be supported—Agencies to use best scientific and commercial data available—Consultation.]—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 of this Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.

(b) [Time period for consultation with Federal agencies—Time period for consultation with permit or license applicants—Secretary to prepare a written statement after consultation—Criteria for determining whether consultation and opinion are effective—Written statement required for

Federal action not jeopardizing continued existence—Contents of statement.]—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required,

(II) the information that is required to complete the consultation, and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) of this section shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion issued by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2), the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection; and

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection;

the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact, and

(iii) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clause (ii).

(c) [Federal agency to request information from Secretary concerning likely presence of endangered or threatened species—Preparation of biological assessment—Period for completion of biological assessment—National Environmental Policy Act compliance—Biological assessment for exemption applicants.]—(1) To facilitate compliance with the requirements of subsection (a)(2), each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) [Limitation on irreversible or irretrievable commitment of resources.]—After initiation of consultation required under subsection (a)(2),

the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

(e) [Endangered Species Committee established—Duties, membership, compensation—Quorum requirement—Chairman—Frequency of meetings—Detailing of personnel to assist committee—Agent's authority—Committee authorized to acquire information from Federal agencies—Use of United States mail—Administrative support services—Promulgation of rules, regulations and procedures—Issuance of subpenas—Voting restrictions.]—(1) There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B)The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act [5 U.S.C. 552a], the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragrpah (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) [Promulgation of regulations concerning form and manner of exemption application—Contents of application.]—Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) [Written application for exemption—Time frame for filing application—"Final agency action" defined—Contents of application—Notification of Governors in affected States—Publication in Federal Register—Time period for response to exemption applications—Determination of compliance or denial of application—Denial considered final agency action—Hearing on exemption application—Time period for report to Commission—Contents of report—Consideration of exemption application to be in accordance with Title 5—Detailing of agency personnel to assist Committee—Meetings and records open to the public.]— (1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2) of this section, the Secretary's opinion under subsection (b) of this section indicates that the agency action would violate subsection (a)(2) of this section. An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) of this section after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application

for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A)(i), (ii), and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b)(1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public

(h) [Time period for making final determination to grant an exemption—Five votes required—Criteria used to determine whether to grant an exemption—Final determination considered final agency action—Exemption permanent—Exceptions.]—(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5) of this section. The Committee shall grant an exemption from the requirements of subsection (a)(2) of this section for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4) of this section and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was

not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) [Exemption not allowed if violative of treaty or international obligation—Certification by Secretary of State—Publication in Federal Register.]—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) [Exemption for national security reasons.]—Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) [Exemption decision not considered major Federal action—Environmental impact statement.]—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]: *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) [Issuance of exemption order specifying mitigation and enhancement measures—Exemption applicant to pay for mitigation and enhancement measures—Mitigation and enhancement measures not to be considered as project costs for cost benefit analysis—Performance of mitigation and enhancement by government—Report by exemption applicant to Committee—Notice of public availability to be published in Federal Register.]—(1) If the Committee determines under subsection (h) of this section that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of

such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) [Exemption from 60-day notice requirement.]—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) [Judicial review available—Procedures for seeking judicial review.]—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) of this section in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) [Exempted action not to be considered a taking of endangered or threatened species.]—Notwithstanding sections 4(d) and 9(a)(1)(B) and (C) or any regulation promulgated to implement either such section—

(1) any action for which an exemption is granted under subsection (h) shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iii) shall not be considered to be a taking of the species concerned.

(p) [President authorized to make determinations in declared disaster areas—Criteria for presidential determination—Committee to accept Presidential determinations.]—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by

subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection. (87 Stat. 892; Act of November 10, 1978, 92 Stat. 3752; Act of December 28, 1979, 93 Stat. 1226; Act of October 13, 1982, 96 Stat. 1417, 1426; 16 U.S.C. § 1536)

EXPLANATORY NOTES

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970, Public Law 91-190, 83 Stat. 852), referred to in subsections (c) and (k) of the text, appears in Volume IV in chronological order.

Reference in the Text. Extracts from the Disaster Relief Act of 1974 (Act of May 22, 1974, Public Law 93-228, 88 Stat. 143), referred to in subsection (p) of the text, appear in Volume IV in chronological order.

NOTES OF OPINIONS

Operation of Reclamation projects 1
Washoe Project repayment contract 2

1. Operation of Reclamation projects

The Secretary of the Interior has an affirmative obligation under section 2(c) of the Endangered Species Act to operate reclamation projects to conserve endangered and threatened species, and is not limited merely to the obligation under section 7(a) of the Act to avoid actions which might "jeopardize" such species. *Carson – Truckee Water Conservancy District v. Watt,* 549 F. Supp. 704 (D. Nev. 1982). [Editor's note: This holding was affirmed sub nom. *Carson – Truckee Water Conservancy District v. Clark,* 741 F. 2d 257 (9th Cir. 1984), cert. denied, 105 S.Ct. 1842 (1985).]

2. Washoe Project repayment contract

Because the Endangered Species Act of 1973 is a clear Congressional mandate, the Interior Department could not execute a repayment contract for the Washoe Project which did not adequately protect the threatened and endangered species of the Truckee River System. However, development of fish and wildlife resources is only one feature of the project's expressly authorized multi-purpose scheme. Should preservation of the affected species require committing all or a substantial portion of the capacity of the Stampede Reservoir to nonreimbursable purposes, such deviation from the project purposes would require Congressional reauthorization of the Stampede Division. Memorandum of Solicitor Martz to Regional Solicitor, Pacific Southwest, January 19, 1981.

Sec. 8. [International cooperation—Use of foreign currency to provide assistance to foreign countries—Encouragement of foreign programs—Assignment of personnel to assist foreign countries—Law enforcement investigations and research abroad.]—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which

the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

(c) After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act. (87 Stat. 892; Act of December 28, 1979; 93 Stat. 1228; 16 U.S.C. §1537)

EXPLANATORY NOTE

Reference in the Text. The Agricultural Trade and Development Act of 1954 (Act of July 10, 1954, 68 Stat. 454), as amended, referred to in subsection (a) of the text, does not appear herein.

* * * * *

Sec. 9. [Prohibited acts: fish and wildlife—Prohibited acts: plants—Exception for species held in captivity or controlled environment—Violation of convention—Import and export of fish or wildlife—Permission from the Secretary—Records of import and export—Access to records—Reports—Promulgation of regulations—Failure to file re-

ports—Import and export at designated ports.]—(a)(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided,* That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant

to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a)(1) of this section shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978, or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c)(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) (1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the

subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) (1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 9, 1969 (16 U.S.C. 66cc-4(d)), shall, if such designation is in effect on the day before the date of enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in his section. (87 Stat. 893; Act of November 10, 1978, 92 Stat. 3760; Act of October 13, 1982, 96 Stat. 1426; 16 U.S.C. §1538)

Sec. 10. (a) [Secretary authorized to make exceptions to prohibited acts—Permit issuance—Contents of permit application—Conditions to

be met before permit issuance—Revocation.]—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurance as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) [Exemption for economic hardship—Application for exemption—Duration of exemption—No exemption for Appendix I species—Definition: "undue economic hardship"—Further requirements—Secretarial discretion.]—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species

pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act, or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) [Publication in Federal Register—Comment from interested parties—Information received open to the public.]—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be

available to the public as a matter of public record at every stage of the proceeding.

(d) [Condition for granting permits and exemptions.]—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) [Conditioned exemption for Alaskan natives—Conditions for exemption—Taking in a wasteful manner—Definitions: "subsistence", "authentic native articles of handicrafts and clothing"—Exception to exemption—Material and negative effects—Promulgation of regulations—Hearings in affected judicial districts—Removal of regulations.]—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithsanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may

be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) [Definitions: "pre-Act endangered species part", "scrimshaw product"—Exemptions for pre-Act endangered species parts—Application—Contents and prerequisites—Issuance of certificate of exemption—Contents of certificate—Rules and regulations—Contract validity—Separability clause—Liability—Renewal of exemption—Certificate of renewal—Review of regulations—Scope of review—Review report to Congress—Revised regulations.]—(1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purpose of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a

renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(9)(A) The Secretary shall carry out a comprehensive review of the effectiveness of the regulations prescribed pursuant to paragraph (5) of this subsection—

(i) in insuring that pre-Act finished scrimshaw products, or the raw materials for such products, have been adequately accounted for and not disposed of contrary to the provisions of this Act, and

(ii) in preventing the commingling of unlawfully imported or acquired marine mammal products with such exempted products either by persons to whom certificates of exemption have been issued under paragraph (4) of this subsection or by subsequent purchasers from such persons.

(B) In conducting the review required under subparagraph (A), the Secretary shall consider, but not be limited to—

(i) the adequacy of the reporting and records required of exemption holders;

(ii) the extent to which such reports and records are subject to verification;

(iii) methods for identifying individual pieces of scrimshaw products and raw materials and for preventing commingling of exempted materials from those not subject to such exemption; and

(iv) the retention of unworked materials in controlled access storage.

The Secretary shall submit a report of such review to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on the Environment and Public Works of the Senate and make it available to the general public. Based on such review, the Secretary shall, on or before October 1, 1983, propose and adopt such revisions to such regulations as he deems necessary and appropriate to carry out this paragraph. Upon publication of such revised regulations, the Secretary may renew for a further period of not to exceed three years any certificate of exemption previously renewed under paragraph (8) of this subsection, subject to such new terms and conditions as are necessary and appropriate under the revised regulations; except that any certificate of exemption that would, but for this clause, expire on or after the date of enactment of this paragraph, and before the date of the adoption of such regulations may be extended until such time after the date of adoption as may be necessary for purposes of applying such regulations to the certificate. Notwithstanding

the foregoing, however, no person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless such person has been issued a valid certificate of exemption by the Secretary under this subsection and unless such product or the raw material for such product was held by such person on the date of enactment of this paragraph.

(g) [Burden of proof.]—In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) [Applicability of provisions limited to certain articles—Import of excepted articles—Designation of one port within each custom region—Application for return of certain confiscated materials.]—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article which—

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the

Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) [Transshipment of fish and wildlife—Criteria for determining whether a violation occurred.]—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity, be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j) [Definition: "experimental population"—Population release authorization to further conserve species—Pre-authorization proceedings—Experimental populations to be treated as threatened species—Designation of critical habitat—Determination whether essential to the continued existence of a threatened or endangered species.]—(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except

when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species. (87 Stat. 896; Act of July 12, 1976, 90 Stat. 911; Act of November 10, 1978, 92 Stat. 3760; Act of December 28, 1979, 93 Stat. 1230; Act of October 13, 1982, 96 Stat. 1422; 16 U.S.C. § 1539)

Sec. 11. (a) [Penalties and enforcement—Civil penalties—Opportunity for a hearing—Separate offense—Attorney General authorized to file civil actions—District court jurisdiction—Record—Standard of review—Hearing procedure—Subpenas—Witnesses—Contempt of court—No penalty for self-protection.]—(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than regulation relating to record-keeping or filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in ac-

cordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) [Criminal violations—Conviction of Federal lessees, licensees, etc.—No conviction for self-protection.]—(1) Any person who knowingly violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d), (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any lesses, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself,

a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) [District court jurisdiction.]—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) [Rewards—Source of reward money—Amount—Government employees not eligible.]—The Secretary or the Secretary of the Treasury shall pay a reward from sums received as penalties, fines, or forfeitures of property for any violation of this Act or any regulation issued hereunder to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this Act or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection.

(e) [Enforcement—Issuance of process—Detention and inspection—Arrest without a warrant—Seizure—Forfeiture—Authority to enforce—Attorney General authorized to enjoin violator.]—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the

Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this Act or regulation issued under authority thereof.

(f) [Promulgation of enforcement regulations.] The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable

for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) [Citizen suits—District court jurisdiction—Standard of review—Limitations—Forum—Intervention—Cost of litigation—Other remedies not precluded.]—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such

notification in the case of an action under this section respecting an emergency posting a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunction relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) [Coordination with other laws—Functions of the Secretary of Agriculture not impaired—Functions and responsibilities of the Secretary of the Treasury not superseded or limited.]—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country. (87 Stat. 897; Act of July 12, 1976, 90 Stat. 913; Act of November 10, 1978, 92 Stat. 3761; Act of November 16, 1981, 95 Stat. 1079; Act of October 13, 1982, 96 Stat. 1425; 16 U.S.C. § 1540)

Sec. 12. [Authorization of endangered plant species review.]—The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation. (87 Stat. 901; 16 U.S.C. § 1541)

* * * * *

Sec. 17. [Construction with Marine Mammal Protection Act of 1972.]—Except as otherwise provided in this chapter, no provision of this chapter shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.]. (87 Stat. 903; 16 U.S.C. § 1543)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to the programs and activities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

Legislative History. S. 1983, Public Law 93-205 in the 93d Congress. Reported in Senate from Commerce July 6, 1973; S. Rept. No. 93-307. Passed Senate July 24, 1973. Passed House, amended, September 18, 1973. House asks for a conference September 18, 1973. Senate agrees to a conference September 24, 1973. Conference report filed December 19, 1973; H. R. Rept. No. 93-740. Senate agrees to conference report December 19, 1973. Hosue agrees to conference report December 20, 1973. Companion bill H.R. 37 reported in House from Merchant Marine and Fisheries July 27, 1973; H.R. Rept. No. 93-412.

AMERICAN FALLS DAM REPLACEMENT

An act to authorize the Secretary of the Interior to enter into agreements with non-Federal agencies for the replacement of the existing American Falls Dam, Minidoka project, Idaho, and for other purposes. (Act of December 28, 1973, Public Law 93-206, 87 Stat. 904)

[Sec. 1. Constructing agency to finance replacement of dam—United States to take title—Dam a feature of the Minidoka project—Water level maintained—Prevention of erosion.]—The Secretary of the Interior (hereinafter called the Secretary) is authorized to negotiate and enter into agreements with the American Falls Reservoir District or other appropriate agency representing the present spaceholders (hereinafter called the constructing agency), which agreements shall authorize the constructing agency to finance and provide for the construction of a dam and related facilities to replace the existing American Falls Dam of the Minidoka project, Idaho-Wyoming. The United States shall take title to the dam upon a determination by the Secretary that construction of the dam is substantially completed, and the dam shall be a feature of the Minidoka reclamation project and shall be considered to be a "Government dam" as defined by the Federal Power Act (Act of June 10, 1920, 41 Stat. 1063, as amended). The Secretary shall operate and maintain the replacement dam as a feature of the Minidoka project. The construction and operation of the replacement dam shall not result in an increase in the elevation of the reservoir water surface above that maintained for the original dam, and provision shall be made for the correction and prevention of erosion related to the reservoir or for the full and adequate compensation of adjacent landowners (including owners of land subject to a flowage easement for the reservoir) if such erosion cannot be corrected or prevented. (87 Stat. 904)

EXPLANATORY NOTES

Supplementary Provision: District Bonds Tax-Exempt. Section 7 of the Act of December 23, 1975 (Public Law 94-164, 26 U.S.C. §103(d)) provides that bonds to finance a dam for furnishing water for irrigation with the generation of electric energy as a subordinate use, such as those issued by the American Falls Reservoir District to finance replacement of American Falls Dam, are tax-exempt. The 1975 Act does not appear herein. For legislative history of the Act see H.R. Rept. No. 94-581 and S. Rept. No 94-570 on H.R. 9968, 94th Cong., 1st Sess.

Reference in the Text. Section 3 (10) of the Federal Power Act (41 Stat. 1063, as amended), referred to in the text, defines "Government dam" as a dam or other work constructed or owned by the United States for Government purposes with or without contributions from others. Section 3(10) appears in Volume I at page 265.

Sec. 2. (a) [Reaffirmation of existing contract rights.]—Replacement of the existing dam as authorized in section 1 hereof shall in no way alter or change the present proportionate storage rights of present spaceholders in the American Falls Reservoir and shall constitute a reaffirmation of existing contract rights between the Secretary and the spaceholders except as otherwise provided in this Act.

(b) [Construction of highway.]—The constructing agency shall: (1) include as a part of the project, a river crossing meeting the then current Department of Transportation standards for Federal-aid secondary highway two-lane traffic, which crossing shall be located on top of the replacement dam or immediately downstream from the dam, and which crossing shall be financed by State, Federal, and constructing agency funds, or any combination thereof as the parties deem appropriate; and (ii) design and construct an additional two lanes on top of the replacement dam, which additional two lanes may be funded with State, Federal, or constructing agency funds, or any combination thereof. For the purposes of subpart (ii) of this subsection, the constructing agency shall be considered an "agency" within the meaning of section 320(a) of title 23, United States Code.

(c) [Highway to be maintained during dam construction.]—The plans and specifications for the construction of the dam shall require that an adequate two-lane, two-way crossing shall be maintained at or near the site of the dam during construction. (87 Stat. 904)

EXPLANATORY NOTE

Reference in the Text. Section 320(a) of title 23, United States Code, referred to in section 2(b) of the text, authorizes only an "agency" to design and construct a public highway bridge across a Federal dam. For the purposes of section 320, an "agency" means each executive department, independent establishment, office, board, bureau, commission, authority, administration, corporation wholly owned or controlled by the United States, or other agency of the Government of the United States. The section appears in Volume II at page 1448.

Sec. 3. [Repayment contracts for replacement dam.]—The constructing agency may enter into repayment contracts with the spaceholders in the existing American Falls Reservoir providing for the repayment by the spaceholders of proportionate shares of the total project costs incurred by the constructing agency for engineering, financing, designing, and constructing the replacement dam, and the Secretary shall be a party to said contracts and the delivery of water to the spaceholders shall be contingent upon the execution of such contracts and the fulfillment of the obligations thereunder: *Provided*, That said contracts shall be consistent with the terms of existing contracts between the Secretary and the spaceholders for repayment of the costs of the existing American Falls Dam. (87 Stat. 905)

NOTE OF OPINION

1. Repayment contracts

The execution, pursuant to the Act of December 28, 1973, of new contracts between the American Falls Reservoir District, the Federal Government, and irrigation districts holding rights to storage space in the American Falls Reservoir for the repayment of the District's proportionate share of the construction cost of the replacement of the American Falls Dam, Minidoka Reclamation Project, does not divest landowners who voted against the contract but who live in a participating irrigation district of any property rights under existing reclamation repayment contracts. It is the irrigation districts, and not the landowners, which are the parties to the existing repayment contracts. *Kerner v. Johnson*, 99 Idaho 433, 583 P. 2d 360 (1978).

Sec. 4. [Construction of non-Federal hydroelectric facilities.]—The constructing agency may contract with an appropriate non-Federal entity for the use of the falling water leaving the dam for power generation, which contract shall provide for a monetary return to the constructing agency to defray the costs of construction of the replacement dam. The constructing agency may enter into agreements with an appropriate non-Federal entity to coordinate the construction of hydroelectric power facilities with the construction of the replacement dam. The contract and agreements for use of the falling water shall not be subject to the limitations of section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), or any similar limitations in any other applicable Acts of Congress: *Provided*. That said contract for falling water shall be approved by the Secretary and shall not impair the efficiency of the project to serve the other purposes of the Minidoka project. (87 Stat. 905)

EXPLANATORY NOTE

Reference in the Text. Section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1194), referred to in the text, provides among other things for the lease of power privileges or sale of electric power produced by a project, at certain rates, for periods not to exceed forty years. Preference in such lease or sale is given to municipalities, public corporations or agencies, and cooperatives and other non-profit organizations financed by loans made pursuant to the Rural Electrification Act of 1936 (49 Stat. 1363), as amended (7 U.S.C. §901 *et seq.*). Section 9(c) of the 1939 Act appears in Volume I at page 647.

Sec. 5. [Approval of designs and specifications by Secretary—Costs reimbursable to Secretary.]—Construction of the replacement dam shall not be initiated until the Secretary has approved the designs and specifications of the dam and the plan of construction of the dam and of the proposed operation of the dam and reservoir. Construction of each related facility shall not be initiated until the Secretary has approved the designs and specifications thereof. Costs incurred by the Secretary in reviewing such designs, specifications, plans, and construction shall be included as project costs allocated to beneficiaries of the replacement dam and shall be reimbursable to the Secretary. (87 Stat. 905)

Sec. 6. [Public recreation—Fish and wildlife enhancement.]—The Secretary is authorized to provide specific facilities for public recreation and fish and wildlife enhancement in connection with the replacement dam, and the costs of such facilities shall be repaid in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213). In addition, specific facilities for public recreation may also be provided in accordance with the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended (16 U.S.C. 460, et seq.). (87 Stat. 905)

EXPLANATORY NOTE

References in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72, 79 Stat. 213) and the Land and Water Conservation Fund Act (Act of September 3, 1964, Public Law 88-578, 78 Stat. 897), referred to in the text, appear in Volume III at pages 1820 and 1785, respectively.

Sec. 7. [Appropriations authorized.]—There is hereby authorized to be appropriated for construction of specific facilities for public recreation and fish and wildlife enhancement the sum of $400,000 (July 1972 prices) plus or minus such amounts, if any, as may be required by reason of the changes in the cost of construction work of the type involved therein as shown by engineering cost indices. There are also authorized to be appropriated such funds as may be necessary to meet the prorated construction cost apportionable to the irrigation storage rights of the Michaud Division of the Fort Hall Indian Reservation for space in the reservoir behind the American Falls Replacement Dam and such cost shall be subject to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 368a). There are also authorized to be appropriated such funds as are required for the operation and maintenance of the dam and related facilities. (87 Stat. 905)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Background. The American Falls Dam was constructed in 1925-27 as a feature of the Minidoka project, Idaho-Wyoming. Replacement of the Dam was necessitated by a chemical reaction between the aggregate and the cement which led to a gradual deterioration of the structure.

Reference in the Text. The Act of July 1, 1932 (47 Stat. 564), referred to in the text, is the so-called Leavitt Act, which provides among other things that the collection of all construction costs against Indian-owned lands within a Government irrigation project be deferred, and no assessments be made on behalf of such charges against such lands, until the Indian title thereto shall have been extinguished, and further provides for the cancellation of certain construction assessments previously levied. The 1932 Act appears in Volume I at page 504.

Legislative History. S. 1529, Public Law 93-206 in the 93d Congress. Reported in Senate from Interior and Insular Affairs June 15, 1973; S. Rept. No. 93-223. Passed Senate June 19, 1973. Reported in House from Interior and Insular Affairs December 6, 1973; H.R. Rept. No. 93-701. Passed House, amended, December 17, 1973. Senate agrees to House amendments December 18, 1973.

H.V. EASTMAN LAKE

An act to provide for the naming of the lake to be created by the Buchanan Dam, Chowchilla River, California. (Act of December 28, 1973, Public Law 93-217, 87 Stat. 912)

[H.V. Eastman Lake, Calif.—Designation.]—The lake to be created by the Buchanan Dam on the Chowchilla River, California, authorized by section 203 of the Flood Control Act of 1962, shall be known and designated as the "H.V. Eastman Lake". Any law, regulation, document, or record of the United States in which such lake is designated or referred to shall be held to refer to such lake as the "H.V. Eastman Lake". (87 Stat. 912)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Section 203 of the Flood Control Act of 1962 (Act of October 23, 1962, Public Law 87-874, 76 Stat. 1173), referred to in the text, appears in Volume III at page 1701.

Legislative History. H.R. 655, Public Law 93-217 in the 93d Congress. Reported in House from Public Works October 9, 1973; H.R. Rept. No. 93-556. Passed House October 15, 1973. Reported in Senate from Public Works December 13, 1973; S. Rept. No. 93-627. Passed Senate December 14. 1973.

WATER RESOURCES DEVELOPMENT ACT OF 1974

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. (Act of March 7, 1974, Public Law 93-251, 88 Stat. 12)

TITLE I—WATER RESOURCES DEVELOPMENT

* * * * *

Sec. 8. [San Francisco Bay-Delta Model.]—The Secretary of the Army, acting through the Chief of Engineers, is authorized to operate and maintain the San Francisco Bay-Delta Model in Sausalito, California, for the purpose of testing proposals affecting the environmental quality of the region, including, but not limited to, salinity intrusion, dispersion of pollutants, water quality, improvements for navigation, dredging, bay fill, physical structures, and other shoreline changes which might affect the regimen of the bay-delta waters. (88 Stat. 16)

Sec. 9. [Water resource development projects—Negligence of United States or its contractors—Damages.]—The requirement in any water resources development project under the jurisdiction of the Secretary of the Army, that non-Federal interests hold and save the United States free from damages due to the construction, operation, and maintenance of the project, does not include damages due to the fault or negligence of the United States or its contractors. (88 Stat. 16; 42 U.S.C. § 1962d-15)

* * * * *

Sec. 12. [Secretary of the Army—Review of inactive authorized projects—Views of interested parties—Submission of list to Congress—Deauthorization of inactive projects.]—(a) As soon as practicable after the date of enactment of this section and at least once each year thereafter, the Secretary of the Army, acting through the Chief of Engineers, shall review and submit to Congress a list of those authorized projects for works of improvement of rivers and harbors and other waterways for navigation, beach erosion, flood control, and other purposes which have been authorized for a period of at least eight years without any Congressional appropriations within the last eight years and which he determines, after appropriate review, should no longer be authorized. Each project so listed shall be accompanied by the recommendation of the Chief of Engineers together with his reasons for such recommendation. Prior to the submission of such list to the Congress, the Secretary of the Army, acting through the Chief of Engineers, shall obtain the views of interested Federal departments, agencies, and instrumentalities, and of the Governor of each State wherein

such project would be located, which views shall be furnished within sixty days after being requested by the Secretary and which shall accompany the list submitted to Congress. Prior to the submission of such list to Congress the Secretary of the Army, acting through the Chief of Engineers, shall notify each Senator in whose State, and each Member of the House of Representatives in whose district, a project (including any part thereof) on such list would be located.

(b) Such list shall be delivered to both Houses on the same day and to each House while it is in session. A project on such list shall not be authorized at the end of the first period of ninety calendar days of continuous session of Congress after the date such list is delivered to it unless between the date of delivery and the end of such ninety-day period, either the Committee on Public Works of the House of Representatives or the Committee on Public Works of the Senate adopts a resolution stating that such project shall continue to be an authorized project. For the purposes of this section continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety-day period. The provisions of this section shall not apply to any project contained in a list of projects submitted to the Congress within ninety days preceding the date of adjournment sine die of any session of Congress.

(c) Nothing in this section shall be construed so as to preclude the Secretary from withdrawing any project or projects from such list at any time prior to the final day of the period provided for in subsection (b).

(d) This section shall not be applicable to any project which has been included in a resolution adopted pursuant to subsection (b).

(e) The Secretary of the Army, acting through the Chief of Engineers, shall, on request by resolution of the Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives, review authorized projects for inclusion in the list of projects provided for in subsection (a) of this section. If any project so reviewed is not included in any of the first three lists submitted to the Congress after the date of the resolution directing the review of the project, a report on the review together with the reasons for not recommending deauthorization, shall be submitted to the Committees on Public Works of the Senate and House of Representatives not later than the date of the third list submitted to Congress after the date of such resolution. (88 Stat. 16; Act of October 22, 1976, 90 Stat. 2933; 33 U.S.C. § 579)

EXPLANATORY NOTE

1976 Amendment; Supplementary Provision. Subsection (a) of section 157 of the Water Resources Development Act of 1976 (Act of October 22, 1976, Public Law 94-587, 90 Stat. 2917), amended section 12(b) by striking out "one hundred and eighty" each time it appeared and inserting in lieu thereof "ninety." Subsection (b) of section 157 provided that the amendment made by subsection (a) shall take effect on January 1, 1977. Extracts from the 1976 Act, not including section 157, appear in Volume IV in chronological order.

Sec. 13. [Flood Control Act of 1960 amended—Road replacement design standards.]—Section 207(c) of the Flood Control Act of 1960 (33 U.S.C. 701r-1(c)) is hereby amended to read as follows:

"(c) For water resources projects to be constructed in the future, when the taking by the Federal Government of an existing public road necessitates replacement, the substitute provided will, as nearly as practicable, serve in the same manner and reasonably as well as the existing road. The head of the agency concerned is authorized to construct such substitute roads to the design standards which the State or owning political division would use in constructing a new road under similar conditions of geography and under similar traffic loads (present and projected). In any case where a State or political subdivision thereof requests that such a substitute road be constructed to a higher standard than that provided for in the preceding provisions of this subsection, and pays, prior to commencement of such construction, the additional costs involved due to such higher standard, such agency head is authorized to construct such road to such higher standard. Federal costs under the provisions of this subsection shall be part of the nonreimbursable project costs." (88 Stat. 17; 33 U.S.C. § 701r-1)

EXPLANATORY NOTES

Reference in the Text. Section 207(c) of the Flood Control Act of 1960, referred to in and amended by the text, was also amended by section 208 of the Flood Control Act of 1962 (Act of October 23, 1962, 76 Stat. 1196) and appears, as so amended, in Volume III at page 1705.

Editor's Note Annotations. Annotations of opinions are found in Supplement I under "October 23, 1962—Flood Control Act of 1962—Sec. 208(c)."

* * * * *

Sec. 22. [Secretary of the Army—Comprehensive plans for drainage basins.]—(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with any State in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins located within the boundaries of such State and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans. (88 Stat. 20)

* * * * *

Sec. 32. (a) Short title.]—This section may be cited as the "Streambank Erosion Control Evaluation and Demonstration Act of 1974".

(b) [Program established.]—The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to establish and conduct for a period of five fiscal years a national streambank erosion prevention and control demonstration program. The program shall consist of (1) an evaluation of the extent of streambank erosion on navigable rivers and their tributaries; (2) development of new methods and techniques for bank pro-

tection, research on soil stability, and identification of the causes of erosion; (3) a report to the Congress on the results of such studies and the recommendations of the Secretary of the Army on means for the prevention and correction of streambank erosion; and (4) demonstration projects, including bank protection works.

(c) [Demonstration projects.]—Demonstration projects authorized by this section shall be undertaken on streams selected to reflect a variety of geographical and environmental conditions, including streams with naturally occurring erosion problems and streams with erosion caused or increased by manmade structures or activities. At a minimum, demonstration projects shall be conducted at multiple sites on—

(1) the Ohio River;

(2) that reach of the Missouri River between Fort Randall Dam, South Dakota, and Sioux City, Iowa;

(3) that reach of the Missouri River in North Dakota at or below the Garrison Dam, including areas on the right bank at river miles 1345; 1310; 1311; 1316.5; 1334.5; 1341; 1343.5; 1379.5; 1385; and on the left bank at river miles 1316.5; 1320.5; 1323; 1326.5; 1335.7; 1338.5; 1345.2; 1357.5; 1360; 1366.5; 1368; and 1374;

(4) the delta and hill areas of the Yazoo River Basin generally in accordance with the recommendations of the Chief of Engineers in his report dated September 23, 1972;

(5) the delta of the Eel River, California.

(6) the lower Yellowstone River from Intake Montana, to the mouth of such river.

(d) [Obligations of non-Federal interests.]—Prior to construction of any projects under this section, non-Federal interests shall agree that they will provide without cost to the United States lands, easements, and rights-of-way necessary for construction and subsequent operation of the projects; hold and save the United States free from damages due to construction, operation, and maintenance of the projects; and operate and maintain the projects upon completion.

* * * * *

(f) [Reports to Congress.]—The Secretary of the Army shall make an interim report to Congress on work undertaken pursuant to this section by September 30, 1978, and shall make a [final] report to the Congress no later than December 31, 1981. (88 Stat. 21; Act of October 22, 1976, 90 Stat. 2932, 2934; 42 U.S.C. § 1962d-5 note)

EXPLANATORY NOTE

1976 Amendments. Subsection (a) of section 155 of the Water Resources Development Act of 1976 (Act of October 22, 1976, Public Law 94-587, 90 Stat. 2917), amended subsection (c) by adding subparagraphs (5) and (6) as they appear above. Section 161 of the 1976 Act added the mileage references at the end of subsection (c)(3) and subsection (f). Extracts from the 1976 Act, not including sections 155(a) and 161(2), appear in Volume IV in chronological order.

* * * * *

Sec. 36. [Flood Control Act of 1970 amended—Auburn Reservoir.]—Section 222 of the Flood Control Act of 1970 (Public Law 91-611) is amended by inserting at the end thereof the following: "The Secretary may also provide for the cost of construction of a two-lane, all-weather paved road (including appropriate two-lane bridges) extending from Old United States Highway 40, near Weimar across the North Fork and Middle Fork of the American River to the Eldorado County Road near Spanish Dry Diggings, substantially in accordance with the report of the Secretary entitled 'Replacement Alternative Upstream Road System, Auburn Reservoir—June 1970'." (88 Stat. 22)

Sec. 40. [Water resource development projects—Cash contributions of non-Federal public bodies—Repayment provisions—Modification of existing cost sharing agreements.]—(a) In connection with any water resource development project, heretofore, herein, or hereafter authorized to be undertaken by the Secretary of the Army, the construction of which has not been initiated as of the date of the enactment of this section, where authorization requires that non-Federal public bodies make an agreed-upon cash contribution as part of their reimbursement to the Federal Government for construction costs, or a specific portion of the construction costs, and where there exists no other provision of law which would permit extended repayment for the construction costs or such specific portion of the construction costs involved, such non-Federal public bodies may make such repayment in annual installments during the period of construction.

(b) Upon the request of affected non-Federal public bodies, the Secretary of the Army is authorized to modify existing cost sharing agreements in order to effectuate the provisions of subsection (a) of this section. (88 Stat. 23; 42 U.S.C. § 1962d-5c)

* * * * *

Sec. 55. [Secretary of the Army—Prevention of shore and streambank erosion—Assistance to non-Federal interests.]—The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide technical and engineering assistance to non-Federal public interests in developing structural and nonstructural methods of preventing damages attributable to shore and streambank erosion. (88 Stat. 28; 42 U.S.C. § 1962d-5 nts)

* * * * *

Sec. 65. [Reservoir projects—Modification of storage—Limitations.]—In the case of any reservoir project authorized for construction by the Corps of Engineers, Bureau of Reclamation, or other Federal agency when the Administrator of the Environmental Protection Agency determines pursuant to section 102(b) of the Federal Water Pollution Control Act that any storage in such project for regulation of streamflow for water quality is not needed, or is needed in a different amount, such project may be modified

accordingly by the head of the appropriate agency and any storage no longer required for water quality may be utilized for other authorized purposes of the project when, in the opinion of the head of such agency, such use is justified. Any such modification of a project where the benefits attributable to water quality are 15 per centum or more but not greater than 25 per centum of the total project benefits shall take effect only upon the adoption of resolutions approving such modification by the appropriate committees of the Senate and House of Representatives. The provisions of the section shall not apply to any project where the benefits attributable to water quality exceed 25 per centum of the total project benefits. (88 Stat. 30; 33 U.S.C. § 1252a)

EXPLANATORY NOTE

Reference in the Text. Section 102(b) of the Federal Water Pollution Control Act (Act of October 18, 1972, Public Law 92-500, 86 Stat. 816), referred to in the text, appears in Volume IV in chronological order as it is codified at 33 U.S.C. § 1252(b).

* * * * *

Sec. 73. [Flood protection—Consideration of non-structural alternatives—Non-Federal participation.]—(a) In the survey, planning, or design by any Federal agency of any project involving flood protection, consideration shall be given to nonstructural alternatives to prevent or reduce flood damages including, but not limited to, floodproofing of structures; flood plain regulation; acquisition of flood plain lands for recreational, fish and wildlife, and other public purposes; and relocation with a view toward formulating the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages.

(b) Where a nonstructural alternative is recommended, non-Federal participation shall be comparable to the value of lands, easements, and rights-of-way which would have been required of non-Federal interests under section 3 of the Act of June 27, 1936 (Public Law Numbered 738, Seventy-fourth Congress), for structural protection measures but in no event shall exceed 20 per centum of the project costs. (88 Stat. 32; 33 U.S.C. § 701b-11)

EXPLANATORY NOTE

Reference in the Text. The Act of June 22, 1936 (49 Stat. 1570), erroneously referred to in section 73(b) as the Act of June 27, 1936, is the Flood Control Act of 1936. Section 3 of the 1936 Act appears in Volume I at page 546.

* * * * *

Sec. 77. [Federal Water Project Recreation Act amended.]—(a) The Federal Water Project Recreation Act (79 Stat. 213) is hereby amended as follows:

(1) Strike out "and to bear not less than one-half the separable costs of the project allocated to either or both of said purposes, as the case may be"

in section 2(a) and insert in lieu thereof "and to bear not less than one-half the separable costs of the project allocated to recreation, and to bear one-quarter of such costs allocated to fish and wildlife enhancement". (88 Stat. 33; 16 U.S.C. § 460*l*-13)

(2) Strike out "not more than one-half the separable costs" in section 2(a) (3) and insert in lieu thereof "not more than one-half the separable costs of the project allocated to recreation and exactly three-quarters of such costs allocated to fish and wildlife enhancement". (88 Stat. 33; 16 U.S.C. § 460*l*-13)

(3) Strike out "bear not less than one-half the costs of lands, facilities, and project modifications provided for either or both of those purposes, as the case may be" in section 3(b) (1) and insert in lieu thereof "bear not less than one-half the costs of lands, facilities, and project modifications provided for recreation, and will bear one-quarter of such costs for fish and wildlife enhancement". (88 Stat. 33; 16 U.S.C. § 460*l*-14)

(b) The amendments made by this section shall apply to all projects the construction of which is not substantially completed on the date of enactment of this Act. (88 Stat. 33; 16 U.S.C. § 460*l*-13 nts)

(c) In the case of any project (1) authorized subject to specific cost-sharing requirements which were based on the same percentages as those established in the Federal Water Project Recreation Act, and (2) construction of which is not substantially completed on the date of enactment of this Act, the cost-sharing requirements for such project shall be the same percentages as are established by the amendments made by subsection (a) of this section for projects which are subject to the Federal Water Project Recreation Act. (88 Stat. 33; 16 U.S.C. § 460*l*-13 nts)

EXPLANATORY NOTE

Editor's Note, Annotations. Annotations of opinions are found in Volume III beginning at page 1820 and in Supplement I under "July 9, 1965—Federal Water Project Recreation Act."

Sec. 78. [Modified flood protection project—Indian Bend Wash, Ariz.]—The project for flood protection on Indian Bend Wash. Maricopa County, Arizona, authorized by the Flood Control Act of 1965 (79 Stat. 1083) is hereby modified to provide that all costs of the siphon system from the Arizona Canal, required to be provided in connection with the relocation of irrigation facilities shall be paid by the United States. (88 Stat. 33)

EXPLANATORY NOTE

Background; Reference in the Text. Indian Bend Wash has a drainage area of about 224 square miles in Maricopa County, Arizona, and drains into the Salt River about ten miles east of Phoenix. The Arizona Canal of the Salt River project crosses Indian Bend Wash about seven miles upstream from the Salt River. Because of inadequate channel capacity in the wash, residential areas in the City of Scottsdale as well as agricultural and public utility properties are subject to flood damage. The Flood Control Act of 1965 (Act of October 27, 1965, Public Law 89-998, 79 Stat. 1083) authorizes the U.S. Army Corps of Engineers to construct seven miles of concrete lined channel extending from the Arizona

Canal to the Salt River. The Arizona Canal would be siphoned under the channel improvement by means of a 700-foot-long-box culvert. As originally authorized, all costs for irrigation facility modifications, including the siphon, were to be borne by non-Federal interests. Under a revised plan adopting a "green belt" concept to replace plans for a concrete channel, the siphon system has become part of the upstream inlet to the project and is now considered to be part of Federal costs. Extracts from the Flood Control Act of 1965, not including the paragraph authorizing the Indian Bend project, appear in volume III at page 1855.

* * * * *

Sec. 80. (a) [Establishment of interest rate formula.]—The interest rate formula to be used in plan formulation and evaluation for discounting future benefits and computing costs by Federal officers, employees, departments, agencies, and instrumentalities in the preparation of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects shall be the formula set forth in the "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources" approved by the President on May 15, 1962, and published as Senate Document 97 of the Eighty-seventh Congress on May 29, 1962, as amended by the regulation issued by the Water Resources Council and published in the Federal Register on December 24, 1968 (33 F.R. 19170: 18 C.F.R. 704.39), until otherwise provided by a statute enacted after the date of enactment of this Act. Every provision of law and every administrative action in conflict with this section is hereby repealed to the extent of such conflict.

(b) [Projects authorized before 1969.]—In the case of any project authorized before January 3, 1969, if the appropriate non-Federal interests have, prior to December 31, 1969, given satisfactory assurances to pay the required non-Federal share of project costs, the discount rate to be used in the computation of benefits and costs for such project shall be the rate in effect immediately prior to December 24, 1968, and that rate shall continue to be used for such project until construction has been completed, unless otherwise provided by a statute enacted after the date of enactment of this Act.

(c) [Planning considerations for water and related resource projects—Objectives.]—The President shall make a full and complete investigation and study of principles and standards for planning and evaluating water and related resources projects. Such investigation and study shall include, but not be limited to, consideration of enhancing regional economic development, the quality of the total environment including its protection and improvement, the well-being of the people of the United States, and the national economic development, as objectives to be included in federally-financed water and related resources projects and in the evaluation of costs and benefits attributable to such projects, as intended in section 209 of the Flood Control Act of 1970 (84 Stat. 1818, 1829), the interest rate formula to be used in evaluating and discounting future benefits for such projects,

and appropriate Federal and non-Federal cost sharing for such projects. He shall report the results of such investigation and study, together with his recommendations, to Congress not later than one year after funds are first appropriated to carry out this subsection. (88 Stat. 34; 42 U.S.C. § 1962d-17)

EXPLANATORY NOTE

Reference in the Text. Section 209 of the Flood Control Act of 1970 (Act of December 31, 1970, 84 Stat. 1829, 42 U.S.C. § 1962-2), referred to in subsection (c) of the text, appears in Volume IV in chronological order.

NOTE OF OPINION

1. Central Utah Project—authorized interest rate

In evaluating the financial feasibility of the Uintah Unit of the Central Utah Project in the certification report of April 25, 1975, it was not necessary to use 5⅞ percent discount rate then in use as opposed to the 3¼ percent discount rate employed in the feasibility report on which Congress had relied in its September 30, 1968 authorization of the project. The 3¼ percent discount rate was one of the key assumptions on which the project had received public support and congressional approval in 1968. Moreover, the use of the lower discount rate has been fully disclosed to Congress, which can withhold appropriation authorization if the lower rate is no longer acceptable. Letter of Solicitor Austin to Representative Gunn McKay, February 24, 1976.

* * * * *

Sec. 89. [Rogue River Basin Project modified—Construction of Applegate Lake project.]—The project for the Rogue River Basin, Oregon and California, as authorized in section 203 of the Flood Control Act of 1962 (Public Law 87-874) is modified to provide that construction of the Applegate Lake, Oregon project may commence prior to non-Federal interests making necessary arrangements with the Secretary of the Interior for repayment in accordance with Federal reclamation laws. The Applegate project shall not be operated for irrigation purposes until such time as the Secretary of the Interior makes the necessary arrangements with non-Federal interests to recover the costs, in accordance with Federal reclamation laws, which are allocated to the irrigation purpose. (88 Stat. 38)

EXPLANATORY NOTE

Reference in the Text. The paragraph of section 203 of the Flood Control Act of 1962 (Act of October 23, 1962, 76 Stat. 1192) which authorized the Rogue River Basin project, appears in Volume III at page 1703.

* * * * *

Sec. 107. [Corps of Engineers water resources development projects—Sewage treatment—Cost allocation.]—If the Secretary of the Army, acting through the Chief of Engineers and in consultation with the Administrator of the Environmental Protection Agency and affected non-Federal interests, determines that environmental, engineering, and economic considerations

make it advisable to utilize the services of a regional or municipal sewage treatment plant for the treatment of sewage resulting from the operating of recreation and other facilities at Corps of Engineers water resources development projects, then the Secretary is authorized to include as part of the reasonable service charges contemplated by section 313 of the Federal Water Pollution Control Act payment, in whole or in part, for that portion of the costs of constructing the sewage treatment plant which is attributable to the purpose of treating the sewage resulting from the operation of such Corps facilities. Payment for such construction cost may be either in lump sum or on an installment basis. (88 Stat. 43)

EXPLANATORY NOTE

Reference in the Text. Section 313 of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Act of October 18, 1972, Public Law 92-500, 86 Stat. 816) and subquent amendatory legislation, referred to in the text, appears herein in chronological order as it is codified at 33 U.S.C. § 1323.

* * * * *

Sec. 109. [Short title.]—This title may be cited as the "Water Resources Development Act of 1974". (88 Stat. 49; 42 U.S.C. § 1962d-5c note)

EXPLANATORY NOTE

Legislative History. H.R. 10203 in the 93d Congress. Reported in House from Public Works; H.R. Rept. No. 93-541. Passed House October 12, 1973. Passed Senate, amended, January 22, 1974. Conference report, H.R. Rept. No. 93-796. House agrees to conference report February 19, 1974. Senate agrees to conference report February 21, 1974.

DISASTER RELIEF ACT OF 1974

[Extracts from] An act entitled the "Disaster Relief Act Amendments of 1974". (Act of May 22, 1974, Public Law 93-288, 88 Stat. 143).

[Sec. 1. Short title]—This Act may be cited as the "Disaster Relief Act of 1974".

TITLE I—FINDINGS, DECLARATIONS, AND DEFINITIONS

FINDINGS AND DECLARATIONS

Sec. 101. (a) The Congress hereby finds and declares that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations;

(6) providing Federal assistance programs for both public and private losses sustained in disasters; and

(7) providing a long-range economic recovery program for major disaster areas. (81 Stat. 144; 42 U.S.C. § 5121)

DEFINITIONS

Sec. 102. As used in this Act—

(1) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.

(2) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government" means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) "Federal agent" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross. (83 Stat. 144; 42 U.S.C. § 5122)

TITLE II—DISASTER PREPAREDNESS ASSISTANCE

FEDERAL AND STATE DISASTER PREPAREDNESS PROGRAMS

Sec. 201. (a) The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies (including the Defense Civil Preparedness Agency) and includes—

(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

(2) training and exercises;

(3) postdisaster critiques and evaluations;

(4) annual review of programs;

(5) coordination of Federal, State, and local preparedness programs;

(6) application of science and technology;

(7) research.

(b) The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State $250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from the date of enactment of this Act. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

(1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, except that no such grant shall exceed $25,000 per annum to any State. (88 Stat. 145; 42 U.S.C. § 5131)

DISASTER WARNINGS

Sec. 202. (a) The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 201(c) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281(c)), or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

(d) The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters. (88 Stat. 146; 42 U.S.C. § 5132)

TITLE III—DISASTER ASSISTANCE ADMINISTRATION

PROCEDURES

Sec. 301. (a) All requests for a determination by the President that an

emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may determine that an emergency exists which warrants Federal assistance.

(b) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster. Based upon such Governor's request, the President may declare that a major disaster exists, or that an emergency exists. (88 Stat. 146; 42 U.S.C. § 5141)

FEDERAL ASSISTANCE

Sec. 302. (a) In the interest of providing maximum mobilization of Federal assistance under this Act, the President shall coordinate, in such manner as he may determine, the activities of all Federal agencies providing disaster assistance. The President may direct any Federal agency, with or without reimbursement, to utilize its available personnel, equipment, supplies, facilities, and other resources including managerial and technical services in support of State and local disaster assistance efforts. The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency as he may designate.

(b) Any Federal agency charged with the administration of a Federal assistance program is authorized, if so requested by the applicant State or local authorities, to modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

* * * * *

(88 Stat. 147; 42 U.S.C. § 5142)

COORDINATING OFFICERS

Sec. 303. (a) Immediately upon his declaration of a major disaster, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) In order to effectuate the purposes of this Act, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this Act shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599); and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) When the President determines assistance under this Act is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government. (88 Stat. 147; 42 U.S.C. § 5143)

EXPLANATORY NOTE

Reference in the Text. The Act of January 5, 1905 (33 Stat. 599), referred to in subsection (b) (3) of the text, incorporated the American National Red Cross. The Act does not appear herein.

EMERGENCY SUPPORT TEAMS

Sec. 304. The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this Act. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without

loss of seniority, pay, or other employee status. (88 Stat. 148; 42 U.S.C. § 5144)

EMERGENCY ASSISTANCE

Sec. 305. (a) In any emergency, the President may provide assistance to save lives and protect property and public health and safety.

(b) The President may provide such emergency assistance by directing Federal agencies to provide technical assistance and advisory personnel to the affected State to assist the State and local governments in—

(1) the performance of essential community services; warning of further risks and hazards; public information and assistance in health and safety measures; technical advice on management and control; and reduction of immediate threats to public health and safety; and

(2) the distribution of medicine, food, and other consumable supplies, or emergency assistance.

(c) In addition, in any emergency, the President is authorized to provide such other assistance under this Act as the President deems appropriate. (88 Stat. 148; 42 U.S.C. § 5145)

COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

Sec. 306. (a) In any major disaster or emergency, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

(1) utilizing or lending, with or without compensation therefor, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food and other consumable supplies, or emergency assistance;

(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

(4) Performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including but not limited to: search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; demolition of unsafe structures that endanger the public; warning of further risks and hazards; public information and assistance on health and safety meas-

ures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph.

(b) Work performed under this section shall not preclude additional Federal assistance under any other section of this Act. (88 Stat. 149; 42 U.S.C. § 5146)

REIMBURSEMENT

Sec. 307. Federal agencies may be reimbursed for expenditures under this Act from funds appropriated for the purposes of this Act. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this Act shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies. (88 Stat. 149; 42 U.S.C. § 5147)

NONLIABILITY

Sec. 308. The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this Act. (88 Stat. 149; 42 U.S.C. § 5148)

PERFORMANCE OF SERVICES

Sec. 309. (a) In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) In performing any services under this Act, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President. (88 Stat. 150; 42 U.S.C. § 5149)

EXPLANATORY NOTE

Reference in the Text. 5 U.S.C. § 3109, referred to in paragraph (b) (2), permits an agency head to contract for temporary or intermittent services of experts or consultants, when authorized by statute, without regard to the provisions of Title 5 U.S.C. relating to general schedule classifications and pay rates of Federal employees. The provision does not appear herein.

USE OF LOCAL FIRMS AND INDIVIDUALS

Sec. 310. In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster. (88 Stat. 150; 42 U.S.C. § 5150)

NONDISCRIMINATION IN DISASTER ASSISTANCE

Sec. 311 (a) The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(b) As a condition of participation in the distribution of assistance or supplies under this Act or of receiving assistance under section 402 or 404 of this Act, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts. (88 Stat. 150; 42 U.S.C. § 5151)

USE AND COORDINATION OF RELIEF ORGANIZATIONS

Sec. 312. (a) In providing relief and assistance under this Act, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in

providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this Act, and such other regulation as the President may require. (88 Stat. 150; 42 U.S.C. § 5152)

PRIORITY TO CERTAIN APPLICATIONS FOR PUBLIC FACILITY AND PUBLIC HOUSING ASSISTANCE

Sec. 313. (a) In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters, under the following Acts:

(1) title II of the Housing Amendments of 1955, or any other Act providing assistance for repair, construction, or extension of public facilities;

* * * * *

(88 Stat. 151; 42 U.S.C. § 5153)

* * * * *

REVIEWS AND REPORTS

Sec. 316. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments providing disaster preparedness and assistance, in order to assure maximum coordination and effectiveness of such programs, and shall from time to time report thereon to the Congress. (88 Stat. 152; 42 U.S.C. § 5156)

* * * * *

TITLE IV—FEDERAL DISASTER ASSISTANCE PROGRAMS

FEDERAL FACILITIES

Sec. 401. (a) The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing leg-

islation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insuffiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President. (88 Stat. 153; 42 U.S.C. § 5171)

REPAIR AND RESTORATION OF DAMAGED FACILITIES

Sec. 402. (a) The President is authorized to make contributions to State or local governments to help repair, restore, reconstruct, or replace public facilities belonging to such State or local governments which were damaged or destroyed by a major disaster.

(b) The President is also authorized to make grants to help repair, restore, reconstruct, or replace private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged or disabled, and facilities on Indian reservations as defined by the President, which were damaged or destroyed by a major disaster.

(c) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the grant shall be based on the net costs of restoring such facilities substantially to their predisaster condition.

(d) For the purposes of this section, "public facility" includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

(e) The Federal contribution for grants made under this section shall not exceed 100 per centum of the net cost of repairing, restoring, reconstructing, or replacing any such facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards.

(f) In those cases where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (e) of this section, a contribution based on 90 per centum of the Federal estimate of the total cost of repairing, restoring, reconstructing, or replacing all damaged facilities owned by it within its jurisdiction. The cost

of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area. (88 Stat. 154; 42 U.S.C. § 5172)

DEBRIS REMOVAL

Sec. 403. (a) The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal. (88 Stat. 154; 42 U.S.C. § 5173)

* * * * *

PROTECTION OF ENVIRONMENT

Sec. 405. No action taken or assistance provided pursuant to sections 305, 206, or 403 of this Act, or any assistance provided pursuant to section 402 or 419 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provision of law. (88 Stat. 155; 42 U.S.C. § 5175)

MINIMUM STANDARDS FOR PUBLIC AND PRIVATE STRUCTURES

Sec. 406. As a condition of any disaster loan or grant made under the provisions of this Act, the recipient shall agree that any repair or construction to be financed therewith shall be in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards, and shall furnish such evidence of com-

pliance with this section as may be required by regulation. As a further condition of any loan or grant made under the provisions of this Act, the State or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed or approved by the President after adequate consultation with the appropriate elected officials of general purpose local governments, and the State shall furnish such evidence of compliance with this section as may be required by regulation. (88 Stat. 156; 42 U.S.C. § 5176)

* * * * *

EMERGENCY COMMUNICATIONS

Sec. 415. The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate. (88 Stat. 158; 42 U.S.C. § 5185)

* * * * *

IN-LIEU CONTRIBUTION

Sec. 419. In any case in which the Federal estimate of the total cost of (1) repairing, restoring, reconstructing, or replacing, under section 402, all damaged or destroyed public facilities owned by a State or local government within its jurisdiction, and (2) emergency assistance under section 306 and debris removed under section 403, is less than $25,000, then on application of a State or local government, the President is authorized to make a contribution to such State or local government under the provisions of this section in lieu of any contribution to such State or local government under section 306, 402, or 403. Such contribution shall be based on 100 per centum of such total estimated cost, which may be expended either to repair, restore, reconstruct, or replace all such damaged or destroyed public facilities, to repair, restore, reconstruct, or replace certain selected damaged or destroyed public facilities, to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area, or to undertake disaster work as authorized in section 306 or 403. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications and standards. (88 Stat. 159; 42 U.S.C. § 5189)

* * * * *

TITLE VI—MISCELLANEOUS

AUTHORITY TO PRESCRIBE RULES

Sec. 601. (a) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund. (88 Stat. 163; Act of October 13, 1980, 94 Stat. 1893; 42 U.S.C. § 5201)

TECHNICAL AMENDMENTS

Sec. 602.

* * * * *

(m) Whenever reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744), repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act. (88 Stat. 164)

REPEAL OF EXISTING LAW

Sec. 603. The Disaster Relief Act of 1970, as amended (84 Stat. 1744), is hereby repealed, except sections 231, 233, 234, 235, 236, 237, 301, 302, 303, and 304. Notwithstanding such repeal the provisions of the Disaster Relief Act of 1970 shall continue in effect with respect to any major disaster declared prior to the enactment of this Act. (88 Stat. 164; 42 U.S.C. 4401 notes, 42 U.S.C. 4434 note)

EXPLANATORY NOTE

Unrepealed Provisions of 1970 Act. A relevant provision of the Disaster Relief Act of 1970 that was not repealed in the 1974 Act is section 302, which itself repealed the Disaster Relief Act of 1950, the Disaster Relief Act of 1969, and all of the Disaster Relief Act of 1966 except section 7 of that Act, which established assistance for higher education construction in major disaster areas. Section 304 of the 1970 Act, which established effective dates for the Act, also was not repealed by the 1974 Act.

Disaster Relief Act of 1970. The Disaster Relief Act of 1970, 84 Stat. 1744, most provisions of which were repealed by Section 603 of the 1974 Act, itself repealed the Disaster Relief Act of 1950, and all but one provision of the Disaster Relief Act of 1966. Among the provisions of the 1970 Act relevant to reclamation activities, section 1 stated the Act's short title. Section 101 set forth Congressional findings and declarations. Section 102 listed definitions of terms used in the Act. Section 201 provided for Presidential appointment of a Federal coordinating officer in a major disaster area. Section 202 authorized the formation of Federal emergency support teams to be deployed in a major disaster area. Section 203 allowed the President to direct Federal agency cooperation to render emergency assistance in a major disaster, including provisions for reimbursement for expenditures and use of State and local government services. Section 204 directed that Federal funds be used to render disaster assistance through organizations located in the major disaster area to the extent practicable. Section 205 allowed Federal agencies directing grant-in-aid programs to modify procedural requirements for assistance during a major disaster. Section 221 enabled the President to use Federal resources to avert or lessen the effects of a disaster before its occurrence. Section 224 authorized Federal efforts to remove debris on public and private property. Under Section 251, the President was empowered to authorize any Federal agency to repair or replace Federal facilities damaged by a major disaster under certain conditions; Section 252 permitted Federal contribution toward repair or replacement of public facilities belonging to State or local governments and damaged by a major disaster. Section 302 repealed the prior statutory provisions referred to in the first sentence of this Note, and Section 304 set forth effective dates for the 1970 Act's provisions. For legislative history of the 1970 Act, see Public Law 91-606 in the 91st Congress, S. Rept. No. 1157 on S. 3619; H.R. Rept. Nos. 1524 (Public Works Committee) and 1752 (Conference Committee).

* * * * *

EFFECTIVE DATE

Sec. 605. Except for section 408, this Act shall take effect as of April 1, 1974. (88 Stat. 164; 42 U.S.C. 5121 note)

* * * * *

EXPLANATORY NOTES

Not codified. Sections 602 through 605 of this Act are not codified in the U.S. Code.

Editor's Note, Annotations. Annotations of opinions are not included because none were found dealing primarily with the activities of the Bureau of Reclamation or the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

Legislative History. S. 3062, Public Law 93-288 in the 93rd Congress. Reported in Senate from the Committee on Public Works, April 9, 1974, S. Rept. No. 778. Passed Senate April 10, 1974. Passed House, amended, April 11, 1974. House asks for a conference April 11, 1974. Senate agrees to a conference April 23, 1974. Conference report filed May 13, 1974; H.R. Rept. No. 1037. House agrees to conference report May 15, 1974.

COLORADO RIVER BASIN SALINITY CONTROL ACT

An act to authorize the construction, operation, and maintenance of certain works in the Colorado River Basin to control the salinity of water delivered to users in the United States and Mexico. (Act of June 24, 1974, Public Law 93-320, 88 Stat. 266)

[Sec. 1. Short Title.]—This Act may be cited as the "Colorado River Basin Salinity Control Act". (88 Stat. 266; 43 U.S.C. § 1571 note)

TITLE I—PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

Sec. 101. (a) [Enhance and protect quality of Colorado River water—Obligations of United States.]—The Secretary of the Interior, hereinafter referred to as the "Secretary", is authorized and directed to proceed with a program of works of improvement for the enhancement and protection of the quality of water available in the Colorado River for use in the United States and the Republic of Mexico, and to enable the United States to comply with its obligations under the agreement with Mexico of August 30, 1973 (Minute No. 242 of the International Boundary and Water Commission, United States and Mexico), concluded pursuant to the Treaty of February 3, 1944 (TS 994), in accordance with the provisions of this Act.

(b) [Construction authorized—Features of desalting complex—Acquisition of lands—Use of Navajo Station power and energy—Authorization to purchase supplemental power and energy.]—(1) The Secretary is authorized to construct, operate, and maintain a desalting complex, including (1) a desalting plant to reduce the salinity of drain water from the Wellton-Mohawk division of the Gila project, Arizona (hereinafter referred to as the division), including a pretreatment plant for settling, softening, and filtration of the drain water to be desalted; (2) the necessary appurtenant works including the intake pumping plant system, product waterline, power transmission facilities, and permanent operating facilities; (3) the necessary extension in the United States and Mexico of the existing bypass drain to carry the reject stream from the desalting plant and other drainage waters to the Santa Clara Slough in Mexico, with the part in Mexico, subject to arrangements made pursuant to section 101(d); (4) replacement of the metal flume in the existing main outlet drain extension with a concrete siphon; (5) reduction of the quantity of irrigation return flows through acquisition of lands to reduce the size of the division, and irrigation efficiency improvements to minimize return flows; (6) acquire on behalf of the United States such lands or interest in lands in the Painted Rock Reservoir as may be necessary to operate the project in accordance with the obligations of Minute No. 242, and (7) all associated facilities including roads, railroad spur, and transmission lines.

(2) (A) The desalting plant shall be designed to treat approximately one hundred and twenty-nine million gallons a day of drain water using ad-

vanced technology commercially available. The plant shall effect recovery initially of not less than 70 per centum of the drain water as product water, and shall effect reduction of not less than 90 per centum of the dissolved solids in the feed water. The Secretary shall use sources of electric power supply for the desalting complex that will not diminish the supply of power to preference customers from Federal power systems operated by the Secretary.

(B) The Secretary is authorized to use electrical power and energy available from the Navajo Generating Station which is in excess of the Central Arizona Project pumping requirements for the purpose of supplying power and energy requirements of the desalting plant and protective pumping well field constructed pursuant to title I of the Act: *Provided,* That revenues credited to the Lower Colorado River Basin Development Fund shall not be diminished below those amounts which would have accrued had the power been marketed at the rate determined by the Secretary of Energy for the sale of power from the Navajo Generating Station to utilities and public entities, as a result of the use of power and energy for the desalting, protective pumping works, and other uses authorized by law, and that power and energy from the Navajo Generating Station shall be used first to meet the pumping requirements of the Central Arizona Project and after those needs have been met, for the desalting and protective pumping facilities constructed pursuant to title I of the Act, and finally for other uses: *Provided further,* That prior to obtaining power from the Navajo Generating Station under the authority of this subsection, the Secretary shall complete an analysis of alternative sources of supply, including but not limited to the possibility of developing an agreement with the Republic of Mexico whereby the United States (or a non-Federal entity) would enter into contractual arrangements with Mexico for a sufficient supply of power to operate the desalting plant, the regulatory pumping fields and appurtenant facilities.

(C) Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriation Acts, the Secretary of the Interior is authorized to purchase supplemental power and energy as required for the purposes of supplying the power and energy requirements of the desalting plant and protective pumping well field.

(c) [Replacement of reject stream and river water used for habitat losses—National obligation.]—Replacement of the reject stream from the desalting plant, Colorado River waters used for the mitigation of fish and wildlife habitat losses, and of any Wellton-Mohawk drainage water bypassed to the Santa Clara Slough to accomplish essential operation except at such times when there exists surplus water of the Colorado River under the terms of the Mexican Water Treaty of 1944, is recognized as a national obligation as provided in section 202 of the Colorado River Basin Project Act (82 Stat. 895). Studies to identify feasible measures to provide adequate replacement water shall be completed not later than June 30, 1980. Said studies shall be limited to potential sources within the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are within the natural drainage basin of the Colorado

River. Measures found necessary to replace the reject stream from the desalting plant, Colorado River Waters used for the mitigation of fish and wildlife habitat losses, and any Wellton-Mohawk drainage bypassed to the Santa Clara Slough to accomplish essential operations may be undertaken independently of the national obligation set forth in section 202 of the Colorado River Basin Project Act.

(d) [Construction of bypass drain in Mexico.]—The Secretary is hereby authorized to advance funds to the United States section, International Boundary and Water Commission (IBWC), for construction, operation, and maintenance by Mexico pursuant to Minute No. 242 of that portion of the bypass drain within Mexico. Such funds shall be transferred to an appropriate Mexican agency, under arrangements to be concluded by the IBWC providing for the construction, operation, and maintenance of such facility by Mexico.

(e) [Excess desalted water—Yuma, Arizona to have right of first refusal.]—Any desalted water not needed for the purposes of this title may be exchanged at prices and under terms and conditions satisfactory to the Secretary and the proceeds therefrom shall be deposited in the General Fund of the Treasury. The city of Yuma, Arizona, shall have first right of refusal to any such water.

(f) [Reduction of return flows—Improvement in irrigation efficiency of Wellton-Mohawk Irrigation and Drainage District—Reduction of Gila acreage.]—For the purpose of reducing the return flows from the division to one hundred and seventy-five thousand acre-feet or less, annually, the Secretary is authorized to:

(1) Accelerate the cooperative program of Irrigation Management Services with the Wellton-Mohawk Irrigation and Drainage District, hereinafter referred to as the district, for the purpose of improving irrigation efficiency. The district shall bear its share of the cost of such program as determined by the Secretary.

(2) Acquire, by purchase or through eminent domain or exchange, to the extent determined by him to be appropriate, lands or interests in lands to reduce the existing seventy-five thousand developed and undeveloped irrigable acres authorized by the Act of July 30, 1947 (61 Stat. 628), known as the Gila Reauthorization Act. The initial reduction in irrigable acreage shall be limited to approximately ten thousand acres. If the Secretary determines that the irrigable acreage of the division must be reduced below sixty-five thousand acres of irrigable lands to carry out the purpose of this section, the Secretary is authorized, with the consent of the district, to acquire additional lands, as may be deemed by him to be appropriate.

(g) [Disposal of acquired lands.]—The Secretary is authorized to dispose of the acquired lands and interests therein on terms and conditions satisfactory to him and meeting the objective of this Act.

(h) [Installation of Wellton-Mohawk improvements—Costs reimbursable.]—The Secretary is authorized, either in conjunction with or in lieu of land acquisition, to assist water users in the division in installing system

improvements, such as ditch lining, change of field layouts, automatic equipment, sprinkler systems and bubbler systems, as a means of increasing irrigation efficiencies: *Provided, however,* that all costs associated with the improvements authorized herein and allocated to the water users on the basis of benefits received, as determined by the Secretary, shall be reimbursed to the United States in amounts and on terms and conditions satisfactory to the Secretary.

(i) [Amended contract with Wellton-Mohawk Irrigation and Drainage District.]—The Secretary is authorized to amend the contract between the United States and the district dated March 4, 1952, as amended, to provide that—

(1) the portion of the existing repayment obligation owing to the United States allocable to irrigable acreage eliminated from the division for the purposes of this title, as determined by the Secretary, shall be nonreimbursable; and

(2) if deemed appropriate by the Secretary, the district shall be given credit against its outstanding repayment obligation to offset any increase in operation and maintenance assessments per acre which may result from the district's decreased operation and maintenance base, all as determined by the Secretary.

(j) [Secretary authorized to acquire title to lands above Painted Rock Dam.]—The Secretary is authorized to acquire through the Corps of Engineers fee title to, or other necessary interests in additional lands above the Painted Rock Dam in Arizona that are required for the temporary storage capacity needed to permit operation of the dam and reservoir in times of serious flooding in accordance with the obligations of the United States under Minute No. 242. No funds shall be expended for acquisition of land or interests therein until it is finally determined by a Federal court of competent jurisdiction that the Corps of Engineers presently lacks legal authority to use said lands for this purpose. Nothing contained in this title nor any action taken pursuant to it shall be deemed to be a recognition or admission of any obligation to the owners of such land on the part of the United States or a limitation or deficiency in the rights or powers of the United States with respect to such lands or the operation of the reservoir.

(k) [Transfer of funds—Technical assistance.]—To the extent desirable to carry out sections 101(f) (1) and 101(h), the Secretary may transfer funds to the Secretary of Agriculture as may be required for technical assistance to farmers, conduct of research and demonstrations, and such related investigations as are required to achieve higher on-farm irrigation efficiencies.

(l) [Costs nonreimbursable—Exceptions]—All cost associated with the desalting complex shall be nonreimbursable except as provided in sections 101(f) and 101(h). (88 Stat. 266; Act of September 4, 1980, 94 Stat. 1063; 43 U.S.C. § 1571)

EXPLANATORY NOTES

1980 Amendment. Section 1 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1063) amended section 101(b)(2) to read as it appears above by: converting the former

section 101(b)(2) to section 101(b)(2)(A); deleting the last sentence of the paragraph, which had stated "[a]ll costs associated with the desalting plant shall be nonreimbursable"; and by inserting paragraphs 101(b)(2)(B) and 101(b)(2)(C). Section 2 of the Act of September 4, 1980 amended section 101(c) to read as it appears above by inserting ", Colorado River waters used for the mitigation of fish and wildlife habitat losses" after "from the desalting plant" in two places. The 1980 Act appears herein in chronological order.

References in the Text: Minute No. 242; Mexican Water Treaty. The agreement with Mexico of August 30, 1973 (Minute Number 242 of the International Boundary and Water Commission, United States and Mexico), referred to in subsections (a), (b), (d) and (j) of the text, appears at the end of this Act as an Explanatory Note. The Treaty of February 3, 1944, also known as the Mexican Water Treaty of 1944, referred to in subsections (a) and (c) of the text, appears in Volume II at page 750.

Reference in the Text, Wellton-Mohawk Division. The Wellton-Mohawk division of the Gila project, referred to in subsections (b), (c) and (h) of the text, was reauthorized by the Act of July 30, 1947 (61 Stat. 628). The 75,000 acre division begins some 15 miles east of the city of Yuma, Arizona, and continues on both sides of the Gila River for about 50 miles. The 1947 Act appears in Volume II at page 858.

NOTES OF OPINIONS

Projects, eligibility of 1
Yuma Desalting Complex 2

1. Projects, eligibility of

There is no authority under section 101(h) of the Colorado River Basin Salinity Control Act for the United States to share the cost of rehabilitation of six laterals on the Wellton-Mohawk Irrigation and Drainage District canal system. Authorizations under section 101(h) are expressly limited to assistance to water users and the types of system improvements specifically identified by that section demonstrate that it applies to on-farm improvements rather than to improvements on the canal system itself. This conclusion is not affected by language in section 101(b)(1)(5) authorizing irrigation efficiency improvements to minimize return flows, as the specific treatment in section 101(h) of irrigation efficiency improvements is a limitation on the foregoing general statement. Loans for the improvements the District has proposed may, however, be obtained under the Rehabilitation and Betterment Act. Memorandum of Acting Solicitor Ferguson to Commissioner of Reclamation, February 11, 1977.

2. Yuma Desalting Complex

Given the language of section 101(b) of the Colorado River Basin Salinity Control Act and the overall scope of that Act, the Secretary has authority to design the Yuma Desalting Complex to treat up to approximately 129 million gallons per day of drainage water, regardless of source, from the Wellton-Mohawk Irrigation and Drainage District, including Gila River flood infiltration. Memorandum from Solicitor Martz to Commissioner, Water and Power Resources Service, January 19, 1981, in re authority to desalt Gila River water in the Yuma Desalting Plant.

So long as the Yuma Desalting Complex, authorized by section 101(b)(1)(1) of the Colorado River Basin Salinity Control Act, is designed to treat no more than approximately 129 million gallons per day of drainage water from the Wellton-Mohawk division, the decision as to sizing the plant is an administrative matter, with due consideration to be given to the options of (1) running the drain water through the plant and treating it, (2) mixing the raw drain water with treated water, or (3) wasting the drain water to the Santa Clara Slough. Memorandum from Solicitor Martz to Commissioner, Water and Power Resources Service, January 19, 1981, in re authority to desalt Gila River water in the Yuma Desalting Plant.

Sec. 102. (a) [Construction of new canal or lining of Coachella Canal—Definition of "interim period."]—To assist in meeting salinity control objectives of Minute No. 242 during an interim period, the Secretary is authorized to construct a new concrete-lined canal or, to line the presently unlined portion of the Coachella Canal of the Boulder Canyon project,

California, from station 2 plus 26 to the beginning of siphon numbered 7, a length of approximately forty-nine miles. The United States shall be entitled to temporary use of a quantity of water, for the purpose of meeting the salinity control objectives of Minute No. 242, during an interim period, equal to the quantity of water conserved by constructing or lining the said canal. The interim period shall commence on completion of construction or lining said canal and shall end the first year that the Secretary delivers main stream Colorado River water to California in an amount less than the sum of the quantities requested by (1) the California agencies under contracts made pursuant to section 5 of the Boulder Canyon Project Act (45 Stat. 1057), and (2) Federal establishments to meet their water rights acquired in California in accordance with the Supreme Court decree in Arizona against California (376 U.S. 340).

(b) [Repayment of canal construction charges—Proration—Charges nonreimbursable during interim period.]—The charges for total construction shall be repayable without interest in equal annual installments over a period of forty years beginning in the year following completion of construction: *Provided,* That, repayment shall be prorated between the United States and the Coachella Valley County Water District, and the Secretary is authorized to enter into a repayment contract with Coachella Valley County Water District for that purpose. Such contract shall provide that annual repayment installments shall be nonreimbursable during the interim period, defined in section 102(a) of this title and shall provide that after the interim period, said annual repayment installments or portions thereof, shall be paid by Coachella Valley County Water District.

(c) [Secretary authorized to acquire certain private lands within the Imperial Irrigation District.]—The Secretary is authorized to acquire by purchase, eminent domain, or exchange private lands or interests therein, as may be determined by him to be appropriate, within the Imperial Irrigation District on the Imperial East Mesa which receive, or which have been granted rights to receive, water from Imperial Irrigation District's capacity in the Coachella Canal. Costs of such acquisitions shall be nonreimbursable and the Secretary shall return such lands to the public domain. The United States shall not acquire any water rights by reason of this land acquisition.

(d) [Credit of certain charges to Imperial Irrigation District.]—The Secretary is authorized to credit Imperial Irrigation District against its final payments for certain outstanding construction charges payable to the United States on account of capacity to be relinquished in the Coachella Canal as a result of the canal lining program, all as determined by the Secretary: *Provided,* That, relinquishment of capacity shall not affect the established basis for allocating operation and maintenance costs of the main All-American Canal to existing contractors.

(e) [Cession of lands to be held in trust for the Cocopah Tribe—Legal description of lands—Construction of bridges—Payment to tribe.]—The Secretary is authorized and directed to cede the following land to the Cocopah Tribe of Indians, subject to rights-of-way for existing levees, to be held in trust by the United States for the Cocopah Tribe of Indians:

Township 9 south, range 25 west of the Gila and Salt River meridian, Arizona;

Section 25: Lots 18, 19, 20, 21, 22, and 23;

Section 26: Lots 1, 12, 13, 14, and 15;

Section 27: Lot 3; and all accretion to the above described lands.

The Secretary is authorized and directed to construct three bridges, one of which shall be capable of accommodating heavy vehicular traffic, over the portion of the bypass drain which crosses the reservation of the Cocopah Tribe of Indians. The transfer of lands to the Cocopah Indian Reservation and the construction of bridges across the bypass drain shall constitute full and complete payment to said tribe for the rights-of-way required for construction of the bypass drain and electrical transmission lines for works authorized by this title. (88 Stat. 268; 43 U.S.C. § 1572)

Sec. 103. [Construction of well fields—Acquisition of certain lands on the Yuma Mesa—Replacement of lands so acquired—Costs nonreimbursable—Terms of water contracts for municipal, industrial, or irrigation purposes—Acreage limitations not applicable to private lands.]—

(a) The Secretary is authorized to:

(1) Construct, operate, and maintain, consistent with Minute No. 242, well fields capable of furnishing approximately one hundred and sixty thousand acre-feet of water per year for use in the United States and for delivery to Mexico in satisfaction of the 1944 Mexican Water Treaty.

(2) Acquire by purchase, eminent domain, or exchange, to the extent determined by him to be appropriate, approximately twenty-three thousand five hundred acres of lands or interests therein within approximately five miles of the Mexican border on the Yuma Mesa: *Provided, however,* That any such lands which are presently owned by the State of Arizona may be acquired or exchanged for Federal lands.

(3) Any lands removed from the jurisdiction of the Yuma Mesa Irrigation and Drainage District pursuant to clause (2) of this subsection which were available for use under the Gila Reauthorization Act (61 Stat. 628), shall be replaced with like lands within or adjacent to the Yuma Mesa division of the project. In the development of these substituted lands or any other lands within the Gila project, the Secretary may provide for full utilization of the Gila Gravity Main Canal in addition to contracted capacities.

(4) Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts under the terms and conditions of the Act of June 17, 1902 (43 U.S.C. 371 et seq.) as amended and supplemented for the delivery of water from said well field to entities within the United States for municipal and industrial or irrigation purposes: *Provided,* That such contracts for municipal and industrial purposes shall contain terms and conditions as substantially provided in section 9(c)(1) of the Reclamation Project Act of 1939, and that contracts for replacement irrigation water supplies to prevent damage to existing water users on privately developed lands include water charges no greater than if such water users had continued

to pump their own wells without the United States lowering the water table and that the acreage limitation and related provisions of the Reclamation Law will not be applicable to such privately developed lands: *Provided further,* That no contract shall be entered which will impair the ability of the United States to continue to deliver to Mexico on the land boundary at San Luis and in the Limitrophe Section of the Colorado River downstream from Morelos Dam approximately one hundred and forty thousand acre-feet annually, consistent with the terms contained in Minute No 242 of the IBWC.

(b) The cost of work provided for in this section, including delivery of water to Mexico, shall be nonreimbursable; except to the extent that the waters furnished are used in the United States. (88 Stat. 269; Act of September 4, 1980, 94 Stat. 1063; 43 U.S.C. § 1573)

EXPLANATORY NOTES

1980 Amendment. Section 3 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1064) amended section 103 to insert (a)(4). The 1980 Act appears in Volume IV in chronological order.

Reference in the Text. Section 9(c)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in the text, specifies repayment provisions for contracts to furnish water for municipal supply or miscellaneous purposes. Section 9(c)(1) of the 1939 Act appears in Volume I at page 647.

Reference in the Text. The Treaty of February 3, 1944, also known as the Mexican Water Treaty, referred to in subsection (a)(1) of the text, appears in Volume II at page 750.

Sec. 104. [Modifications of projects authorized—Limitations.]—The Secretary is authorized to provide for modifications of the projects authorized by this title to the extent he determines appropriate for purposes of meeting the international settlement objective of this title at the lowest overall cost to the United States. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to the appropriate committees of the Congress, unless the Congress approves an earlier date by concurrent resolution. The Secretary shall notify the Governors of the Colorado River Basin States of such modifications. (88 Stat. 270; 43 U.S.C. § 1574)

Sec. 105. [Contracts authorized in advance of appropriations.]—The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this title in advance of the appropriation of funds therefor. (88 Stat. 270; 43 U.S.C. § 1575)

Sec. 106. [Authorization to administer and dispose of lands and facilities—Revenues credited to Treasury General Fund.]—The Secretary is hereby authorized to administer and dispose of lands and interests in lands acquired, and facilities constructed under this title, and revenues received in connection with this authority shall be credited to the general fund of the Treasury. (Added by Act of September 4, 1980, 94 Stat. 1064; 43 U.S.C. § 1575a)

EXPLANATORY NOTE

1980 Amendment. Section 4 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1064) added section 106. The 1980 Act appears in Volume IV in chronological order.

Sec. 107. [Cooperation with other agencies.]—In carrying out the provisions of this title, the Secretary shall consult and cooperate with the Secretary of State, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and other affected Federal, State, and local agencies. (88 Stat. 270; Act of September 4, 1980, 94 Stat. 1064; 43 U.S.C. § 1576)

EXPLANATORY NOTE

1980 Amendment. Section 4 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1064) renumbered former section 106 as section 107. The 1980 Act appears in Volume IV in chronological order.

Sec. 108. [Prior law not modified except as expressly provided.]—Nothing in this Act shall be deemed to modify the National Environmental Policy Act of 1969, the Federal Water Pollution Control Act, as amended, or, except as expressly stated herein, the provisions of any other Federal law. (88 Stat. 270; Act of September 4, 1980, 94 Stat. 1064; 43 U.S.C. § 1577)

EXPLANATORY NOTE

1980 Amendment. Section 4 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1064) renumbered former section 107 as section 108. The 1980 Act appears in Volume IV in chronological order.

Sec. 109. [Appropriations authorized—Implement improved desalinization techniques into plant design.]—There is hereby authorized to be appropriated the sum of $356,400,000 for the construction of the works and accomplishment of the purposes authorized in sections 101, 102, 103, and 110, of which $3,579,000 is authorized for mitigation of fish and wildlife losses associated with replacement of the Coachella Canal in California, and $6,960,000 is authorized for mitigation of fish and wildlife losses associated with the Desalting Complex Unit and the Protective and Regulatory Pumping Unit in Arizona, based on January 1979, prices plus or minus such amounts as may be justified by reason of ordinary fluctuation in construction costs involved therein, and such sums as may be required to operate and maintain such works and to provide for such modifications as may be made pursuant to section 104. In order to provide for the utilization of significant improvements in desalinization technologies which may have been developed since the Bureau's evaluation, the Secretary is directed to evaluate such cost effective improvements and implement such improved designs into the plant operations when the evaluation indicates that cost savings will result: *Provided, however,* That no more than five percent of the amount authorized to be appropriated is used for these purposes. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 90-646). (88 Stat. 270; Act of September 4, 1980, 94 Stat. 1064; 43 U.S.C. § 1578)

EXPLANATORY NOTES

1980 Amendment. Section 5 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1063) renumbered former section 108 as section 109, and substituted the first two sentences of section 109 as it presently appears for the former first sentence of the section. That sentence stated: "There is hereby authorized to be appropriated the sum of $121,500,000 for the construction of the works and accomplishment of the purposes authorized in sections 101 and 102, and $34,000,000 to accomplish the purposes of section 103, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs involved therein, and such sums as may be required to operate and maintain such works and to provide for such modifications as may be made pursuant to section 104." The 1980 Act appears in Volume IV in chronological order.

Error in the Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1874, 42 U.S.C. § 4602 et seq.), referred to in the text, is Public Law 91-646, not, as printed, Public Law 90-646. Extracts from the 1970 Act appear in Volume IV in chronological order.

NOTE OF OPINION

1. Use of reclamation fund

Although the reclamation fund has received advances from the general fund of the Treasury, it remains separate and distinct from the general fund. As a general rule, if a project is authorized under Reclamation law, or is supplementary to Reclamation law, the reclamation fund is available to finance the costs thereof, absent evidence of Congressional intent to the contrary. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

With regard to Title I of the Colorado River Basin Salinity Control Act, all salinity control measures which are designated nonreimbursable as a national obligation must be financed from the general fund of the Treasury. However, since the measures authorized under sections 101(f) and 101(h) (acceleration of cooperative program and assistance in installation of system improvements to improve irrigation efficiency on the Wellton-Mohawk Irrigation and Drainage District) and section 102 (construction of new or lining of existing Coachella Canal) are not a national obligation, but rather benefit the water users of ongoing Reclamation projects, the reclamation fund is available to finance these measures. With regard to Title II, since Congress designated 75% of the measures authorized thereunder as a national obligation, to be financed from the general fund of the Treasury, and the remaining 25% of Title II costs are funded from the Lower Colorado River Basin Development Fund and the Upper Colorado River Basin Fund, which in turn are financed from the general fund, no portion of Title II costs may be financed from the reclamation fund. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

Sec. 110. [Authorization of measures to mitigate loss of fish and wildlife habitat—Costs nonreimbursable]—Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriate Acts, in order to provide measures determined by the Secretary of the Interior to be appropriate to mitigate loss of fish and wildlife habitat associated with other measures taken under this title:

(a) The Secretary is authorized to—

(1) acquire lands by purchase, eminent domain, or exchange;

(2) dispose of land, facilities, and equipment;

(3) construct, operate, maintain, and make replacements of facilities:

Provided, however, That no funds will be provided for operation, maintenance, or replacement of non-Federal facilities.

(b) All costs authorized by this section are nonreimbursable. (Added by Act of September 4, 1980, 94 Stat. 1065; 43 U.S.C. § 1579)

EXPLANATORY NOTE

1980 Amendment. Section 6 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1065) added section 110. The 1980 Act appears in Volume IV in chronological order.

Sec. 111. [Definitions—Navajo Generating Station—Terms defined in Colorado River Compact.]—As used in this title:

(a) Navajo Generating Station means—

(1) The United States entitlement to a portion of the output of power and energy from the Navajo Generating Station, Page, Arizona, pursuant to United States participation in that generating station;

(2) in the event that said United States entitlement is integrated with other generating facilities, then Navajo Generating Station means that amount of power and energy from the integrated system which is attributable to the United States Navajo entitlement;

(3) when the Navajo Generating Station is replaced at the end of its useful life or an alternative resource is established, then Navajo Generating Station means an amount of power and energy equivalent to the present United States entitlement from Navajo, from the replacement resource.

(b) All terms used herein that are defined in the Colorado River Compact shall have the meanings therein defined. (Added by Act of September 4, 1980, 94 Stat. 1065; 43 U.S.C. § 1580)

EXPLANATORY NOTES

1980 Amendment. Section 7 of the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1063) added section 111. The 1980 Act appears in Volume IV in chronological order.

TITLE II—MEASURES UPSTREAM FROM IMPERIAL DAM

Sec. 201. [Implementation of salinity control policies—Interagency cooperation.]—(a) The Secretary of the Interior shall implement the salinity control policy adopted for the Colorado River in the "Conclusions and Recommendations" published in the Proceedings of the Reconvened Seventh Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River and Its Tributaries in the States of California, Colorado, Utah, Arizona, Nevada, New Mexico, and Wyoming, held in Denver, Colorado, on April 26-27, 1972, under the authority of section 10 of the Federal Water Pollution Control Act (33 U.S.C. 1160), and approved by the Administrator of the Environmental Protection Agency on June 9, 1972.

(b) The Secretary is hereby directed to expedite the investigation, planning, and implementation of the salinity control program generally as described in chapter VI of the Secretary's report entitled, "Colorado River Water Quality Improvement Program, February 1972".

(c) In conformity with section 201(a) of this title and the authority of the Environmental Protection Agency under Federal laws, the Secretary, the Administrator of the Environmental Protection Agency, and the Secretary

of Agriculture are directed to cooperate and coordinate their activities effectively to carry out the objective of this title. (88 Stat. 270; 43 U.S.C. § 1591)

EXPLANATORY NOTE

Reference in the Text. Section 10 of the Federal Water Pollution Control Act (33 U.S.C. 1160), referred to in subsection (a) of the text, appears in Volume II at page 1292. Extracts from the Act as amended by the Federal Water Pollution Control Act Amendments of 1972 (Act of October 18, 1972, Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation are set forth in Volume IV, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

NOTE OF OPINION

1. Alternative studies

The claims of the Environmental Defense Fund that the Secretary of the Interior, the Bureau of Reclamation and the Environmental Protection Agency should evaluate and develop on-farm salinity control techniques as "alternatives" to current salinity control programs, as required by the 1972 policy to be implemented under section 201(a) of the Colorado River Basin Salinity Control Act and by section 102(2)(E) of the National Environmental Policy Act, are properly dismissed because on-farm management measures comprise an integral part of the current program itself. *Environmental Defense Fund, Inc. v. Costle*, 657 F.2d 275, 296-98 (D.C. Cir. 1981).

Sec. 202. [Construction, operation, and maintenance of certain salinity control units authorized.]—The Secretary is authorized to construct, operate, and maintain the following salinity control units as the initial stage of the Colorado River Basin salinity control program.

(1) The Paradox Valley unit, Montrose County, Colorado, consisting of facilities for collection and disposition of saline ground water of Paradox Valley, including wells, pumps, pipelines, solar evaporation ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities.

(2) The Grand Valley unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce the seepage of irrigation water from the irrigated lands of Grand Valley into the ground water and thence into the Colorado River. Measures shall include lining of canals and laterals, and the combining of existing canals and laterals into fewer and more efficient facilities. Prior to initiation of construction of the Grand Valley unit the Secretary shall enter into contracts through which the agencies owning, operating, and maintaining the water distribution systems in Grand Valley, singly or in concert, will assume all obligations relating to the continued operation and maintenance of the unit's facilities to the end that the maximum reduction of salinity inflow to the Colorado River will be achieved. The Secretary is also authorized to provide, as an element of the Grand Valley unit, for a technical staff to provide information and assistance to water users on means and measures for limiting excess water applications to irrigated lands: *Provided*, That such assistance shall not exceed a period of five years after funds first become available under this title. The Secretary will enter into agreements with the Secretary of Agriculture to develop a unified control plan for the Grand Valley unit. The

Secretary of Agriculture is directed to cooperate in the planning and construction of on-farm system measures under programs available to that Department.

(3) The Crystal Geyser unit, Utah, consisting of facilities for collection and disposition of saline geyser discharges; including dikes, pipelines, solar evaporation ponds, and all necessary appurtenant works including operating facilities.

(4) The Las Vegas Wash unit, Nevada, consisting of facilities for collection and disposition of saline ground water of Las Vegas Wash, including infiltration galleries, pumps, desalter, pipelines, solar evaporation facilities, and all appurtenant works including but not limited to roads, fences, power transmission facilities, and operating facilities. (88 Stat. 271; 43 U.S.C. § 1592)

Sec. 203. (a) [Completion and submittal of planning reports.]—The Secretary is authorized and directed to—

(1) Expedite completion of the planning reports on the following units, described in the Secretary's report, "Colorado River Water Quality Improvement Program, February 1972":

(i) Irrigation source control:
Lower Gunnison
Uintah Basin
Colorado River Indian Reservation
Palo Verde Irrigation District

(ii) Point source control:
LaVerkin Springs
Littlefield Springs
Glenwood-Dotsero Springs

(iii) Diffuse source control:
Price River
San Rafael River
Dirty Devil River
McElmo Creek
Big Sandy River

(2) Submit each planning report on the units named in section 203(a)(1) of this title promptly to the Colorado River Basin States and to such other parties as the Secretary deems appropriate for their review and comments. After receipt of comments on a unit and careful consideration thereof, the Secretary shall submit each final report with his recommendations, simultaneously, to the President, other concerned Federal departments and agencies, the Congress, and the Colorado River Basin States.

(b) [Cooperation with the Secretary of Agriculture on research and demonstration projects—Interagency cooperation.]—The Secretary is directed—

(1) in the investigation, planning, construction, and implementation of any salinity control unit involving control of salinity from irrigation sources, to cooperate with the Secretary of Agriculture in carrying out research and demonstration projects and in implementing on-the-farm

improvements and farm management practices and programs which will further the objective of this title;

(2) to undertake research on additional methods for accomplishing the objective of this title, utilizing to the fullest extent practicable the capabilities and resources of other Federal departments and agencies, interstate institutions, States, and private organizations. (88 Stat. 271; 43 U.S.C. § 1593)

Sec. 204. [Colorado River Basin Salinity Control Advisory Council created—Duties.]—(a) There is hereby created the Colorado River Basin Salinity Control Advisory Council composed of no more than three members from each State appointed by the Governor of each of the Colorado River Basin States.

(b) The Council shall be advisory only and shall—

(1) act as liaison between both the Secretaries of Interior and Agriculture and the Administrator of the Environmental Protection Agency and the States in accomplishing the purposes of this title;

(2) receive reports from the Secretary on the progress of the salinity control program and review and comment on said reports; and

(3) recommend to both the Secretary and the Administrator of the Environmental Protection Agency appropriate studies of further projects, techniques, or methods for accomplishing the purposes of this title. (88 Stat. 272; 43 U.S.C. § 1594)

Sec. 205. (a) [Cost allocation of salinity control units—Fifty-year repayment period.]—The Secretary shall allocate the total costs of each unit or separable feature thereof authorized by section 202 of this title, as follows:

(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the policy embodied in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816), 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof shall be nonreimbursable.

(2) Twenty-five per centum of the total costs shall be allocated between the Upper Colorado River Basin Fund established by section 5(a) of the Colorado River Storage Project Act (70 Stat. 107) and the Lower Colorado River Basin Development Fund established by section 403(a) of the Colorado River Basin Project Act (82 Stat. 895), after consultation with the Advisory Council created in section 204(a) of this title and consideration of the following items:

(i) benefits to be derived in each basin from the use of water of improved quality and the use of works for improved water management;

(ii) causes of salinity; and

(iii) availability of revenues in the Lower Colorado River Basin Development Fund and increased revenues to the Upper Colorado River Basin Fund made available under section 205(d) of this title: *Provided*, That costs allocated to the Upper Colorado River Basin Fund under section

205(a)(2) of this title shall not exceed 15 per centum of the costs allocated to the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund.

(3) Costs of construction of each unit or separable feature thereof allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid within a fifty-year period without interest from the date such unit or separable feature thereof is determined by the Secretary to be in operation.

(b) [Repayment by lower basin—Section 403(g) of the Colorado River Basin Project Act amended.]—(1) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof allocated for repayment by the lower basin under section 205(a)(2) of this title shall be paid in accordance with subsection 205(b)(2) of this title, from the Lower Colorado River Basin Development Fund.

(2) Section 403(g) of the Colorado River Basin Project Act (82 Stat. 896) is hereby amended as follows: strike the work "and" after the word "Act," in line 8; insert after the word "Act," the following "(2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(b)(1) of the Colorado River Salinity Control Act and"; change paragraph (2) to paragraph (3).

(c) [Repayment by upper basin.]—Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof allocated for repayment by the upper basin under section 205(a)(2) of this title shall be paid in accordance with section 205(d) of this title from the Upper Colorado River Basin Fund within the limit of the funds made available under section 205(c) of this title.

(d) [Section 5(d) of the Colorado River Storage Project Act amended.]—Section 5(d) of the Colorado River Storage Project Act (70 Stat. 108) is hereby amended as follows: strike the word "and" at the end of paragraph (3); strike the period after the word "years" at the end of paragraph (4) and insert a semicolon in lieu thereof followed by the word "and"; add a new paragraph (5) reading:

"(5) the costs of each salinity control unit or separable feature thereof payable from the Upper Colorado River Basin Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(c) of the Colorado River Salinity Control Act".

(e) [Upward adjustments in electrical rates to cover costs of salinity control units—Limitations.]—The Secretary is authorized to make upward adjustments in rates charged for electrical energy under all contracts administered by the Secretary under the Colorado River Storage Project Act (70 Stat. 105, 43 U.S.C. 620) as soon as practicable and to the extent necessary to cover the costs of construction, operation, maintenance, and replacement of units allocated under section 205(a)(2) and in conformity with section 205(a)(3) of this title: *Provided*, That revenues derived from said rate adjustments shall be available solely for the construction, opera-

tion, maintenance, and replacement of salinity control units in the Colorado River Basin herein authorized. (88 Stat. 273; 43 U.S.C. § 1595)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Federal Water Pollution Control Act Amendments of 1972 (Act of October 18, 1972, Public Law 92-500, 86 Stat. 816), referred to in section 205(a)(1) of the text, and subsequent legislation amending the Federal Water Pollution Control Act, appear in Volume IV in chronological order as codified in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

Sec. 206. [Report required.]—Commencing on January 1, 1975, and every two years thereafter, the Secretary shall submit, simultaneously, to the President, the Congress, and the Advisory Council created in section 204(a) of this title, a report on the Colorado River salinity control program authorized by this title covering the progress of investigations, planning, and construction of salinity control units for the previous fiscal year, the effectiveness of such units, anticipated work needed to be accomplished in the future to meet the objectives of this title, with emphasis on the needs during the five years immediately following the date of each report, and any special problems that may be impeding progress in attaining an effective salinity control program. Said report may be included in the biennial report on the quality of water of the Colorado River Basin prepared by the Secretary pursuant to section 15 of the Colorado River Storage Project Act (70 Stat. 111; 43 U.S.C. 602n), section 15 of the Navajo Indian irrigation project, and the initial stage of the San Juan Chama Project Act (76 Stat. 102), and section 6 of the Fryingpan-Arkansas Project Act (76 Stat. 393). (88 Stat. 274; 43 U.S.C. § 1596)

Sec. 207. [No modification, etc., of existing laws except as provided.]—Except as provided in section 205(b) and 205(d) of this title, with respect to the Colorado River Basin Project Act and the Colorado River Storage Project Act, respectively, nothing in this title shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994; 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057). Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), section 15 of the Colorado River Storage Project Act (70 Stat. 111; 43 U.S.C. 620n), the Colorado River Basin Project Act (82 Stat. 885), section 6 of the Fryingpan-Arkansas Project Act (76 Stat. 393), section 15 of the Navajo Indian irrigation project and initial stage of the San Juan-Chama Project Act (76 Stat. 102), the National Environmental Policy Act of 1969, and the Federal Water Pollution Control Act, as amended. (88 Stat. 274; 43 U.S.C. § 1597)

Sec. 208. (a) [Modifications of projects authorized—Limitations.]—The Secretary is authorized to provide for modifications of the projects authorized by this title as determined to be appropriate for purposes of

meeting the objective of this title. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to appropriate committees of the Congress, and not then if disapproved by said committees, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall be notified of these changes.

(b) [Contracts authorized in advance of appropriations—Appropriations authorized.]—The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this title, in advance of the appropriation of funds therefor. There is hereby authorized to be appropriated the sum of $125,100,000 for the construction of the works and for other purposes authorized in section 202 of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in costs involved therein, and such sums as may be required to operate and maintain such works. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 90-646). (88 Stat. 274; 43 U.S.C. § 1598)

EXPLANATORY NOTE

Error in the Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. § 4602 et seq.), referred to in section 208(b) of the text, is Public Law 91-646, not, as printed, Public Law 90-646. Extracts from the 1970 Act appear in Volume IV in chronological order.

NOTES OF OPINIONS

1. Use of reclamation fund

Although the reclamation fund has received advances from the general fund of the Treasury, it remains separate and distinct from the general fund. As a general rule, if a project is authorized under Reclamation law, or is supplementary to Reclamation law, the reclamation fund is available to finance the costs thereof, absent evidence of Congressional intent to the contrary. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

With regard to Title I of the Colorado River Basin Salinity Control Act, all salinity control measures which are designated nonreimbursable as a national obligation must be financed from the general fund of the Treasury. However, since the measures authorized under sections 101(f) and 101(h) (acceleration of cooperative program and assistance in installation of system improvements to improve irrigation efficiency on the Wellton-Mohawk Irrigation and Drainage District) and section 102 (construction of new or lining of existing Coachella Canal) are not a national obligation, but rather benefit the water users of ongoing Reclamation projects, the reclamation fund is available to finance these measures. With regard to Title II, since Congress designated 75% of the measures authorized thereunder as a national obligation, to be financed from the general fund of the Treasury, and the remaining 25% of Title II costs are funded from the Lower Colorado River Basin Development Fund and the Upper Colorado River Basin Fund, which in turn are financed from the general fund, no portion of Title II costs may be financed from the reclamation fund. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

Sec. 209. [Definitions.]—As used in this title—

(a) all terms that are defined in the Colorado River Compact shall have

the meanings therein defined;

(b) "Colorado River Basin States" means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming. (88 Stat. 275; 43 U.S.C. 1599)

EXPLANATORY NOTE

Presidential Statement. The following statement was issued by the President upon his signing the bill into law:

"The Colorado River Basin Salinity Control Act represents an important milestone in the cordial and continuing international relationship between this Nation and our neighbor to the south, Mexico. Enactment of this legislation will enable the Federal Government to implement measures that will provide Mexico with water of a higher quality than it presently receives from the Colorado River.

"The quality of Mexico's Colorado River water has been recognized as a serious problem by both governments since the early 1960's, when water resources development within the U.S. portion of the Colorado River basin resulted in significant increases in water salinity levels at the international boundary. A number of measures were undertaken to ameliorate this problem but did not result in a permanent solution.

"In June 1972, during his visit to this country, I gave President Echeverría my personal commitment that every effort would be made to find a mutually satisfactory solution to this problem. I appointed Ambassador Herbert Brownell as my special representative to study alternative ways of resolving the problem. The plan recommended by Ambassador Brownell and approved by me formed the basis of an agreement with the Mexican Government and would be implemented through those measures included in this bill. This permanent and definitive solution to the salinity problem was accepted over others because it represents an equitable arrangement for the water users in the Mexicali Valley while not creating adverse effects on current and planned use of the resources of the Colorado River by the seven basin States within the United States.

"The Colorado River Basin Salinity Control Act demonstrates that difficult problems between Nations can be satisfactorily solved if those nations are willing to negotiate in good faith. This has been a key concept in our foreign policy. I congratulate the Congress of the United States for its expeditious action in passing this legislation and look forward to cooperation with the Congress in implementing this agreement.

"In addition to those measures necessary to carry out the international agreement with Mexico, the Congress has authorized several domestic salinity control projects for the Colorado River basin. While I share the desire of the Congress to improve the water quality conditions of the Nation's rivers and waterways, I am concerned that authorization of the four U.S. desalting projects may be premature at this time.

"As called for by current Federal water pollution control legislation, the States are now assessing water pollution problems arising from natural or diffuse sources of pollutants. These State studies will be completed early next year and will serve as the basis for consideration of a national program for combatting these sources of pollution. These domestic Colorado River desalting projects are premature because they have been authorized before the Federal role in a national water pollution program could be properly developed on the basis of these current State studies.

"Also, the financial arrangement for the development of these projects is, to a large extent, contrary to those policies established by this Administration and the Congress for placing most of the financial responsibility for pollution abatement on those who are causing the pollution problem or, in the case of natural pollution, placing the cost of water purification on the water users. When a national Federal program for controlling pollution of this kind is finally developed, I will recommend to the Congress that these Colorado River projects be altered if necessary to conform with these policies."

Minute Number 242, International Boundary and Water Commission, United States and Mexico. The English-language text of the agreement between the United States and Mexico of August 30, 1973 reads as follows:

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
Mexico, D.F.,
August 30, 1973.

MINUTE NO. 242

PERMANENT AND DEFINITIVE SOLUTION TO THE INTERNATIONAL PROBLEM OF THE SALINITY OF THE COLORADO RIVER.

The Commission met at the Secretariat of Foreign Relations, at Mexico, D.F., at 5:00 p.m. on August 30, 1973, pursuant to the instructions received by the two Commissioners from their respective Governments, in order to incorporate in a Minute of the Commission the joint recommendations which were made to their respective Presidents by the Special Representative of President Richard Nixon, Ambassador Herbert Brownell, and the Secretary of Foreign Relations of Mexico, Lic. Emilio O. Rabasa, and which have been approved by the Presidents, for a permanent and definitive solution of the international problem of the salinity of the Colorado River, resulting from the negotiations which they, and their technical and juridical advisers, held in June, July and August of 1973, in compliance with the references to this matter contained in the Joint Communique of Presidents Richard Nixon and Luis Echeverría of June 17, 1972.

Accordingly, the Commission submits for the approval of the two Governments the following

RESOLUTION:

1. Referring to the annual volume of Colorado River waters guaranteed to Mexico under the Treaty of 1944, of 1,500,000 acre-feet (1,850,234,000 cubic meters):
   a) The United States shall adopt measures to assure that not earlier than January 1, 1974, and no later than July 1, 1974, the approximately 1,360,000 acre-feet (1,677,545,000 cubic meters) delivered to Mexico upstream of Morelos Dam, have an annual average salinity of no more than 115 p.p.m. ± 30 p.p.m. U.S. count (121 p.p.m. ± 30 p.p.m. Mexican count) over the annual average salinity of Colorado River waters which arrive at Imperial Dam, with the understanding that any waters that may be delivered to Mexico under the Treaty of 1944 by means of the All American Canal shall be considered as having been delivered upstream of Morelos Dam for the purpose of computing this salinity.
   b) The United States will continue to deliver to Mexico on the land boundary at San Luis and in the limitrophe section of the Colorado River downstream from Morelos Dam approximately 140,000 acre-feet (172,689,000 cubic meters) annually with a salinity substantially the same as that of the waters customarily delivered there.
   c) Any decrease in deliveries under point 1(b) will be made up by an equal increase in deliveries under point 1(a).
   d) Any other substantial changes in the aforementioned volumes of water at the stated locations must be agreed to by the Commission.
   e) Implementation of the measures referred to in point 1(a) above is subject to the requirement in point 10 of the authorization of the necessary works.
2. The life of Minute No. 241 shall be terminated upon approval of the present Minute. From September 1, 1973, until the provisions of point 1(a) become effective, the United States shall discharge to the Colorado River downstream from Morelos Dam volumes of drainage waters from the Wellton-Mohawk District at the annual rate of 118,000 acre-feet (145,551,000 cubic meters) and substitute therefor an equal volume of other waters to be discharged to the Colorado River above Morelos Dam; and, pursuant to the decision of President Echeverría expressed in the Joint Communique of June 17, 1972, the United States shall discharge to the Colorado River downstream from Morelos Dam the drainage waters of the Wellton-Mohawk District that do not form a part of the volumes of drainage waters referred to above, with the understanding that this remaining volume will not be replaced by substitution waters. The Commission shall continue to account for the drainage waters discharged below Mo-

relos Dam as part of those described in the provisions of Article 10 of the Water Treaty of February 3, 1944.

3. As a part of the measures referred to in point 1(a), the United States shall extend in its territory the concrete-lined Wellton-Mohawk bypass drain from Morelos Dam to the Arizona-Sonora international boundary, and operate and maintain the portions of the Wellton-Mohawk bypass drain located in the United States.
4. To complete the drain referred to in point 3, Mexico, through the Commission and at the expense of the United States, shall construct, operate and maintain an extension of the concrete-lined bypass drain from the Arizona-Sonora international boundary to the Santa Clara Slough of a capacity of 353 cubic feet (10 cubic meters) per second. Mexico shall permit the United States to discharge through this drain to the Santa Clara Slough all or a portion of the Wellton-Mohawk drainage waters, the volumes of brine from such desalting operations in the United States as are carried out to implement the Resolution of this Minute, and any other volumes of brine which Mexico may agree to accept. It is understood that no radioactive material or nuclear wastes shall be discharged through this drain, and that the United States shall acquire no right to navigation, servitude or easement by reason of the existence of the drain, nor other legal rights, except as expressly provided in this point.
5. Pending the conclusion by the Governments of the United States and Mexico of a comprehensive agreement on groundwater in the border areas, each country shall limit pumping of groundwaters in its territory within five miles (eight kilometers) of the Arizona-Sonora boundary near San Luis to 160,000 acre-feet (197,358,000 cubic meters) annually.
6. With the objective of avoiding future problems, the United States and Mexico shall consult with each other prior to undertaking any new development of either the surface or the groundwater resources, or undertaking substantial modifications of present developments, in its own territory in the border area that might adversely affect the other country.
7. The United States will support efforts by Mexico to obtain appropriate financing on favorable terms for the improvement and rehabilitation of the Mexicali Valley. The United States will also provide nonreimbursable assistance on a basis mutually acceptable to both countries exclusively for those aspects of the Mexican rehabilitation program of the Mexicali Valley relating to the salinity problem, including tile drainage. In order to comply with the above-mentioned purposes, both countries will undertake negotiations as soon as possible.
8. The United States and Mexico shall recognize the undertakings and understandings contained in this Resolution as constituting the permanent and definitive solution of the salinity problem referred to in the Joint Comunique of President Richard Nixon and President Luis Echeverría dated June 17, 1972.
9. The measures required to implement this Resolution shall be undertaken and completed at the earliest practical date.
10. This Minute is subject to the express approval of both Governments by exchange of Notes. It shall enter into force upon such approval; provided, however, that the provisions which are dependent for their implementation on the construction of works or on other measures which require expenditure of funds by the United States, shall become effective upon the notification by the United States to Mexico of the authorization by the United States Congress of said funds, which will be sought promptly.

Thereupon, the meeting adjourned.

J.F. Friedkin
Commissioner of the United States
David Herrera Jordan
Commissioner of Mexico
F.H. Sacksteder Jr.
Secretary of the United States Section
Fernando Rivas S.
Secretary of the Mexican Section

Legislative History. H.R. 12165, Public Law 93-320 in the 93d Congress. Reported in House from Interior and Insular Affairs May 22, 1974; H.R. Rept. No. 93-1057. Passed House June 11, 1974. Passed Senate, amended, June 12, 1974. House agrees to Senate amendments June 13, 1974.

IMPOUNDMENT CONTROL ACT OF 1974

[Extracts from] An act to establish a new congressional budget process; to establish Committees on the Budget in each House; to establish a Congressional Budget Office; to establish a procedure providing congressional control over the impoundment of funds by the executive branch; and for other purposes. (Act of July 12, 1974, Public Law 93-344, 88 Stat. 297)

[Sec. 1. Short titles]—This Act may be cited as the "Congressional Budget and Impoundment Control Act of 1974". Titles I through IX may be cited as the "Congressional Budget Act of 1974", and title X may be cited as the "Impoundment Control Act of 1974". (88 Stat. 297; 2 U.S.C. § 621 note)

EXPLANATORY NOTE

Cross Reference. Extracts from titles I-IX, the Congressional Budget Act of 1974, appear in the Appendix in Supplement I under title 2 of the U.S. Code.

* * * * *

TITLE X—IMPOUNDMENT CONTROL

PART A—GENERAL PROVISIONS

Sec. 1001. [Disclaimer.]—Nothing contained in this Act, or in any amendments made by this Act, shall be construed as—

(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;

(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;

(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or

(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder. (88 Stat. 332; 2 U.S.C. § 681)

Sec. 1002. [Amendment to Antideficiency Act.]—Section 3679(c)(2) of the Revised Statutes, as amended (31 U.S.C. 665), is amended to read as follows:

"(2) In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and

scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974." (88 Stat. 332; 31 U.S.C. § 665)

EXPLANATORY NOTE

Reference in the Text. Section 3679(c)(2) of the Revised Statutes, 31 U.S.C. § 665(c)(2), referred to and amended by section 1002 of the text, is one of the provisions of the law known as the Anti-Deficiency Act. This provision appears in the Appendix in Volume III at page 1963. It also appears, as recodified and enacted in 1982, in the Appendix in Supplement I as 31 U.S.C. § 1512(c)..

Sec. 1003. [Repeal of existing impoundment reporting provision.]—Section 203 of the Budget and Accounting Procedures Act of 1950 is repealed. (88 Stat. 332)

EXPLANATORY NOTE

Reference in the Text. Section 203 of the Budget and Accounting Procedures Act of 1950, repealed by section 1003 of the text, dealt with transmittal by the President to Congress of supplemental or deficiency appropriations. The section appears, as codified at 31 U.S.C. § 14, in the Appendix in Volume III at page 1952.

PART B—CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

Sec. 1011. [Definitions: "deferral of budget authority"; "rescission bill"; "impoundment resolution"; "continuity of Congressional session".]—For purposes of this part—

(1) "deferral of budget authority" includes—

(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) "Comptroller General" means the Comptroller General of the United States;

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a

proposed deferral of budget authority set forth in a special message transmitted by the President under section 1013; and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3) of this section and in section 1012, and the 25-day periods referred to in sections 1016 and 1017(b)(1). If a special message is transmitted under section 1012 during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3) of this section and in section 1012 (with respect to such message) shall commence on the day after such first day. (88 Stat. 333; 2 U.S.C. § 682)

Sec. 1012. [Rescission or reservation of budget authority—Special message to Congress—Budget authority to be made available for obligation unless Congress completes action on rescission bill within 45 days.]—(a) Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying—

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount

proposed to be rescinded or that is to be reserved. (88 Stat. 333; 2 U.S.C. § 683)

Sec. 1013. [Deferrals of budget authority—Special message to Congress—Budget authority to made available for obligation if either House of Congress passes impoundment resolution disapproving deferral—Not applicable to proposed rescissions or reservations under section 1012.]—(a) Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying—

(1) the amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked by him to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority and specific elements of legal authority invoked by him to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

(b) Any amount of budget authority proposed to be deferred, as set forth in a special message transmitted under subsection (a), shall be made available for obligation if either House of Congress passes an impoundment resolution disapproving such proposed deferral.

(c) The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012. (88 Stat. 334; 2 U.S.C. § 684)

Sec. 1014. [Transmittal of special messages to Congress and Comptroller General—Review by Comptroller General—Revision of information in special message requires supplementary message—President to submit monthly report to Congress—Publication of messages and reports in Federal Register.]—(a) Each special message transmitted under

section 1012 or 1013 shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

(b) A copy of each special message transmitted under section 1012 or 1013 shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under sections 1012 and 1013, the Comptroller General shall review each such message and inform the House of Representatives and the Senate as promptly as practicable with respect to—

(1) in the case of a special message transmitted under section 1012, the facts surrounding the proposed rescission or the reservation of budget authority (including the probable effects thereof); and

(2) in the case of a special message transmitted under section 1013, (A) the facts surrounding each proposed deferral of budget authority (including the probable effects thereof) and (B) whether or not (or to what extent), in his judgment, such proposed deferral is in accordance with existing statutory authority.

(c) If any information contained in a special message transmitted under section 1012 or 1013 is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in subsection (a). The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under subsection (b) which may be necessitated by such revision.

(d) Any special message transmitted under section 1012 or 1013, and any supplementary message transmitted under subsection (c), shall be printed in the first issue of the Federal Register published after such transmittal.

(e) (1) The President shall submit a report to the House of Representatives and the Senate, not later than the 10th day of each month during a fiscal year, listing all budget authority for that fiscal year with respect to which, as of the first day of such month—

(A) he has transmitted a special message under section 1012 with respect to a proposed rescission or a reservation; and

(B) he has transmitted a special message under section 1013 proposing a deferral.

Such report shall also contain, with respect to each such proposed rescission or deferral, or each such reservation, the information required to be submitted in the special message with respect thereto under section 1012 or 1013.

(2) Each report submitted under paragraph (1) shall be printed in the first issue of the Federal Register published after its submission. (88 Stat.

335; 2 U.S.C. § 685)

Sec. 1015. [Failure to transmit special message—Special message transmitted under incorrect section—Reports to Congress by Comptroller General.]—(a) If the Comptroller General finds that the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any other officer or employee of the United States—

(1) is to establish a reserve or proposes to defer budget authority with respect to which the President is required to transmit a special message under section 1012 or 1013; or

(2) has ordered, permitted, or approved the establishment of such a reserve or a deferral of budget authority;

and that the President has failed to transmit a special message with respect to such reserve or deferral, the Comptroller General shall make a report on such reserve or deferral and any available information concerning it to both Houses of Congress. The provisions of this part shall apply with respect to such reserve or deferral in the same manner and with the same effect as if such report of the Comptroller General were a special message transmitted by the President under section 1012 or 1013, and, for purposes of this part, such report shall be considered a special message transmitted under section 1012 or 1013.

(b) If the President has transmitted a special message to both Houses of Congress in accordance with section 1012 or 1013, and the Comptroller General believes that the President so transmitted the special message in accordance with one of those sections when the special message should have been transmitted in accordance with the other of those sections, the Comptroller General shall make a report to both Houses of the Congress setting forth his reasons. (88 Stat. 336; 2 U.S.C. § 686)

Sec. 1016. [Comptroller General empowered to bring civil action to require budget authority to be made available for obligation—Precedence over all other civil actions—25-day waiting period.]—If, under section 1012(b) or 1013(b), budget authority is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. The courts shall give precedence to civil actions brought under this section, and to appeals and writs from decisions in such actions, over all other civil actions, appeals, and writs. No civil action shall be brought by the Comptroller General under this section until the expiration of 25 calendar days of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the

Speaker of the House of Representatives and the President of the Senate. (88 Stat. 336; 2 U.S.C. § 687)

Sec. 1017. [Referral of rescission bills and impoundment resolutions to appropriate Congressional committee—Discharge of committee—Procedures for floor consideration in House and Senate.]—(a) Any rescission bill introduced with respect to a special message or impoundment resolution introduced with respect to a proposed deferral of budget authority shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

(b)(1)If the committee to which a rescission bill or impoundment resolution has been referred has not reported it at the end of 25 calendar days of continuous session of the Congress after its introduciton, it is in order to move either to discharge the committee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other rescission bill with respect to the same special message or impoundment resolution with respect to the same proposed deferral, as the case may be, which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed deferral, as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposig the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(c)(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescission bill or impoundment resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on a rescission bill or impoundment resolution shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of an impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a recission bill or impoundment resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of a rescission bill or impoundment resolution, and motions to proceed to the

consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any rescission bill or impoundment resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any rescission bill or impoundment resolution and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

(d)(1)Debate in the Senate on any rescission bill or impoundment resolution, and all amendments thereto (in the case of a rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a rescission bill shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or an impoundment resolution shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of a rescission bill shall be received. Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. In the case of a rescission bill, a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an impoundment resolution, no amendment or motion to recommit is in order.

(4) The conference report on any rescission bill shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(5) During the consideration in the Senate of the conference report on any rescission bill, debate shall be limited to 2 hours, to be equally divided

between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received. (88 Stat. 337; 2 U.S.C. § 688)

EXPLANATORY NOTES

Codification. Sections 681 through 688 of title 2 of the U.S. Code formerly were classified to sections 1400 through 1407 of Title 31 of the U.S. Code prior to the general revision and enactment of Title 31, Money and Finance, by the Act of September 13, 1982 (Public Law 97-258, 96 Stat. 877).

Legislative History. H.R. 7130, Public Law 93-344 in the 93d Congress. Reported in House from Rules; H.R. Rept. No. 93-658. S. 1541 in the 93d Congress. Reported in Senate from Government Operations (S. Rept. No. 93-579) and Rules and Administration (S. Rept. No. 93-688). House conference report H.R. Rept. No. 93-1101; Senate conference report No. S. Rept. 93-924. H.R. 7130 passed in lieu of S. 1541 after substituting for its language much of the text of S. 1541: House June 18, 1974; Senate June 21, 1974.

PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ATOMIC ENERGY COMMISSION APPROPRIATION ACT, 1975

[Extracts from] An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1975, and for other purposes. (Act of August 28, 1974, Public Law 93-393, 88 Stat. 782)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

OPERATION AND MAINTENANCE

* * * * *

[Newlands Reclamation project]—*Provided further,* That no part of the funds appropriated herein shall be used directly or indirectly for the operation of the Newlands Reclamation project in the State of Nevada. (88 Stat. 786)

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act, 1975". (88 Stat. 792)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 15155, Public Law 93-393 in the 93rd Congress. H. Rept. No. 93-1077. S. Rept. No. 93-1032. H.R. Rept. No. 93-1274 (conference report).

SUMNER DAM AND LAKE SUMNER

An act to redesignate the Alamogordo Dam and Reservoir, New Mexico, as Sumner Dam and Lake Sumner, respectively. (Act of October 17, 1974, Public Law 93-447, 88 Stat. 1363)

[Sumner Dam and Lake Sumner, N.M.—Designation.]—The Alamogordo Dam and Reservoir, New Mexico, referred to in the Act of August 11, 1939 (53 Stat. 1414), are redesignated as Sumner Dam and Lake Sumner, respectively. Any law, regulation, map, document, record, or other paper of the United States in which such dam or reservoir is referred to shall be held to refer to such dam as Sumner Dam or such reservoir as Lake Sumner. (88 Stat. 363; 33 U.S.C. 707 note)

EXPLANATORY NOTE

Legislative History. S. 2001, Public Law 93-447 in the 93d Congress. Reported in Senate from Interior and Insular Affairs June 24, 1974; S. Rept. No. 93-959. Passed Senate June 26, 1974. Reported in House from Interior and Insular Affairs September 25, 1974; H.R. Rept. No. 93-1376. Passed House October 7, 1974.

FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM ACT

An act to enable the Secretary of the Interior to provide for the operation, maintenance, and continued construction of the Federal transmission system in the Pacific Northwest by use of the revenues of the Federal Columbia River Power System and the proceeds of revenue bonds, and for other purposes. (Act of October 18, 1974, Public Law 93-454, 88 Stat. 1376)

SHORT TITLE

Section 1. This Act may be cited as the "Federal Columbia River Transmission System Act". (88 Stat. 1376; 16 U.S.C. § 838 note)

FINDINGS

Sec. 2. (a) Congress finds that in order to enable the Secretary of the Interior to carry out the policies of Public Law 88-552 relating to the marketing of electric power from hydroelectric projects in the Pacific Northwest, Public Laws 89-448 and 89-561 relating to use of revenues of the Federal Columbia River Power System to provide financial assistance to reclamation projects in the Pacific Northwest, the treaty between the United States and Canada relating to the cooperative development of the resources of the Columbia River Basin, and other applicable law, it is desirable and appropriate that the revenues of the Federal Columbia River Power System and the proceeds of revenue bonds be used to further the operation, maintenance, and further construction of the Federal transmission system in the Pacific Northwest.

(b) Other than as specifically provided herein, the present authority and duties of the Secretary of Energy relating to the Federal Columbia River Power System shall not be affected by this Act. The authority and duties of the Administrator referred to herein are subject to the supervision and direction of the Secretary. (88 Stat. 1376; Act of August 4, 1977, 91 Stat. 578; 16 U.S.C. § 838)

EXPLANATORY NOTES

1977 Amendment. Section 302(a)(1)(D) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 578) substituted "Secretary of Energy" for "Secretary of the Interior" in subsection (b) of the text. Extracts from the 1977 Act appear in Volume IV in chronological order.

References in the Text. Public Law 88-552 (78 Stat. 756), referred to in subsection (a) in the text, appears in Volume III at page 1760. Public Laws 89-448 (80 Stat. 200) and 89-561 (80 Stat. 707), also referred to in subsection (a) the text, appear in Volume III at pages 1870 and 1886 respectively.

DEFINITIONS

Sec. 3. As used in this Act—

(a) The term "Administrator" means the Administrator, Bonneville Power Administration.

(b) The term "electric power" means electric peaking capacity or electric energy, or both.

(c) The term "major transmission facilities" means transmission facilities intended to be used to provide services not previously provided by the Bonneville Power Administration with its own facilities. (88 Stat. 1376; 16 U.S.C. § 838a)

THE FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM

Sec. 4. The Secretary of Energy, acting by and through the Administrator, shall operate and maintain the Federal transmission system within the Pacific Northwest and shall construct improvements, betterments, and additions to and replacements of such system within the Pacific Northwest as he determines are appropriate and required to:

(a) integrate and transmit the electric power from existing or additional Federal or non-Federal generating units;

(b) provide service to the Administrator's customers;

(c) provide interregional transmission facilities; or

(d) maintain the electrical stability and electrical reliability of the Federal system: *Provided, however,* That the Administrator shall not construct any transmission facilities outside the Pacific Northwest, excepting customer service facilities within any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative which has (i) no generating facilities, and (ii) a distribution system from which it serves both within and without said region, nor shall he commence construction of any major transmission facility within the Pacific Northwest, unless the expenditure of the funds for the initiation of such construction is specifically approved by Act of Congress. (88 Stat. 1376; Act of August 4, 1977, 91 Stat. 578; 16 U.S.C. § 838b)

EXPLANATORY NOTE

1977 Amendment. Section 302(a)(1)(D) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 578) substituted "Secretary of Energy" for "Secretary of the Interior" in the text. Extracts from the 1977 Act appear in Volume IV in chronological order.

NOTES OF OPINIONS

Authorization by appropriation 1
Construction outside Pacific Northwest 2
NEPA compliance 3

1. Authorization by appropriation

Language in an appropriation bill approving the expenditure of funds "for the construction of facilities to integrate new generating facilities at Colstrip, Montana, and the Bonneville Power Administration transmission grid," is sufficiently specific to authorize the Colstrip transmission lines. *County of Missoula v. Johnson,* CV No. 81-35-Bu (D. Mont. Jan. 28, 1982), 13 ELR 20382, *affirmed mem.,* 716 F.2d 910 (9th. Cir. 1983)

2. Construction outside Pacific Northwest

The Bonneville Power Administration has authority to construct transmission facilities outside of the Pacific Northwest, so long as specific approval of funds is made by Congress. *County of Missoula v. Johnson,* CV No. 81-35-Bu (D. Mont. Jan. 28, 1982), 13 ELR 20382, *affirmed mem.,* 716 F.2d 910 (9th. Cir. 1983)

3. NEPA compliance

Congress has full authority to fund a Bonneville Power Administration transmission project before an environmental impact statement has been completed. *County of Missoula v. Johnson*, CV No. 81-35-Bu (D. Mont. Jan. 28, 1982), 13 ELR 20382, *affirmed mem.*, 716 F.2d 910 (9th. Cir. 1983)

CONGRESSIONAL APPROVAL OF EXPENDITURES

Sec. 5. (a) Unless specifically authorized by Act of Congress, the Administrator shall not expend funds made available under this Act, other than funds specifically appropriated by the Congress for such purpose, to acquire any operating transmission facility by condemnation: *Provided*, That this provision shall not restrict the acquisition of the right to cross such a facility by condemnation.

(b) At least sixty days prior to the time a request for approval or authority under section 4 or 5 of this Act is sent to Congress, the Administrator shall give notice of such request to entities in the Pacific Northwest with which the Administrator has power sales or exchange contracts or transmission contracts or which have a transmission interconnection with the Federal transmission system. (88 Stat 1377; 16 U.S.C. § 838c)

TRANSMISSION OF NON-FEDERAL POWER

Sec. 6. The Administrator shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States. (88 Stat. 1377; 16 U.S.C. § 838d)

ACQUISITION OF PROPERTY

Sec. 7. Subject to the provisions of section 5 of this Act the Administrator may purchase or lease or otherwise acquire and hold such real and personal property in the name of the United States as he deems necessary or appropriate to carry out his duties pursuant to law. (88 Stat. 1377; 16 U.S.C. § 838e)

MARKETING AUTHORITY

Sec. 8. The Administrator is hereby designated as the marketing agent for all electric power generated by Federal generating plants in the Pacific Northwest, constructed by, under construction by, or presently authorized for construction by the Bureau of Reclamation or the United States Corps of Engineers except electric power required for the operation of each Federal project and except electric power from the Green Springs project of the Bureau of Reclamation. (88 Stat. 1377; 16 U.S.C. § 838f)

RATES AND CHARGES

Sec. 9. Schedules of rates and charges for the sale, including dispositions to Federal agencies, of all electric power made available to the Administrator

pursuant to section 8 of this Act or otherwise acquired, and for the transmission of non-Federal electric power over the Federal transmission system, shall become effective upon confirmation and approval thereof by the Federal Energy Regulatory Commission. Such rate schedules may be modified from time to time by the Secretary of Energy, acting by and through the Administrator, subject to confirmation and approval by the Federal Energy Regulatory Commission, and shall be fixed and established (1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles, (2) having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric power, including the amortization of the capital investment allocated to power over a reasonable period of years and payments provided for in section 11(b)(9), and (3) at levels to produce such additional revenues as may be required, in the aggregate with all other revenues of the Administrator, to pay when due the principal of, premiums, discounts, and expenses in connection with the issuance of and interest on all bonds issued and outstanding pursuant to this Act, and amounts required to establish and maintain reserve and other funds and accounts established in connection therewith. (88 Stat. 1377; Act of August 4, 1977, 91 Stat. 578; § 7(a), Act of December 5, 1980, 94 Stat. 2723; 16 U.S.C. § 838g)

EXPLANATORY NOTE

1977 and 1980 Amendments. Section 302(a) of the Department of Energy Reorganization Act (Act of August 4, 1977, Public Law 95-91, 91 Stat. 578) transferred to the Secretary of Energy the authority of the Secretary of the Interior to develop rates and charges for the Bonneville Power Administration, and section 301(b) of the 1977 Act transferred to the Secretary of Energy the authority of the Federal Power Commission to confirm and approve such rates. However, section 7(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980, Public Law 96-501, 94 Stat. 2723) provided that the Administrator shall establish such rates and that the Federal Energy Regulatory Commission shall confirm and approve them. The 1977 and 1980 Acts appear herein in chronological order.

NOTES OF OPINIONS

Interim rates 1
Judicial review 2
Rate approval authority 3
Ratemaking procedures 4

1. Interim rates

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy, in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the Natural Gas Act, 15 U.S.C. 717o, which authorizes the FPC to perform all acts necessary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v Duncan*, 499 F. Supp 672, 678-79 (D. Ore. 1980).

The Federal Power Commission had the power to confirm Bonneville Power Administration rates on an interim basis. The Secretary of Energy inherited these powers through the Department of Energy Organization Act. *Montana Power Company v. Edwards*, 531 F. Supp. 9 (D. Ore. 1981).

2. Judicial review

Because section 6 of the Bonneville Project Act and section 9 of the Federal Columbia River Transmission System Act grant such broad discretion to the Secretary in the design of rates, there is no judicial review of rate design because there is no law to apply. *Pacific Power & Light Co. v. Duncan*, 499 F.2d 672, 681-82 (D. Ore. 1980)

3. Rate approval authority

In plain and unambiguous language, Congress, in section 301(b) of the Department of Energy Organization Act, granted the rate approval authority of the Federal Power Commission for Bonneville Power Administration to the Secretary of Energy, not to the Federal Energy Regulatory Commission. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 677-78 (D. Ore. 1980).

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

Pursuant to section 301(b) of the Department of Energy Organization Act, the confirmation and approval authority of the Federal Power Commission for Federal power marketing rates is vested in the Secretary of Energy. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

4. Ratemaking procedures

Where an increase in the wholesale power rates for the Bonneville Power Administration was placed into effect by the Assistant Secretary of Energy for Resource Applications pursuant to Delegation Order No. 0204-33, and the Bonneville Power Administration (BPA) under its published procedures had held 16 public hearings on its proposed rates and 7 more hearings on its revised proposed rates, the BPA customers have been afforded all the process due them under the law and the Constitution. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 679-81 (D. Ore. 1980).

UNIFORM RATES

Sec. 10. The said schedules of rates and charges for transmission, the said schedules of rates and charges for the sale of electric power, or both such schedules, may provide, among other things, for uniform rates or rates uniform throughout prescribed transmission areas. The recovery of the cost of the Federal transmission system shall be equitably allocated between Federal and non-Federal power utilizing such system. (88 Stat. 1378; 16 U.S.C. § 383h)

BONNEVILLE POWER ADMINISTRATION FUND

Sec. 11. (a) There is hereby established in the Treasury of the United States a Bonneville Power Administration fund (hereinafter referred to as the "fund"). The fund shall consist of (1) all receipts, collections, and recoveries of the Administrator in cash from all sources, including trust funds, (2) all proceeds derived from the sale of bonds by the Administrator, (3) any appropriations made by the Congress for the fund, and (4) the following funds which are hereby transferred to the Administrator: (i) all moneys in the special account in the Treasury established pursuant to Executive Order Numbered 8526 dated August 26, 1940, (ii) the unexpended balances in the continuing fund established by the provisions of section 11 of the Bonneville Project Act of August 20, 1937 (16 U.S.C. 831 et seq.), and (iii) the

unexpended balances of funds appropriated or otherwise made available for the Bonneville Power Administration. All funds transferred hereunder shall be available for expenditure by the Secretary of Energy, acting by and through the Administrator, as authorized in this Act and any other Act relating to the Federal Columbia River transmission system, subject to such limitations as may be prescribed by any applicable appropriation act effective during such period as may elapse between their transfer and the approval by the Congress of the first subsequent annual budget program of the Administrator.

(b) The Administrator may make expenditures from the fund, which shall have been included in his annual budget submitted to Congress, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriation acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Administrator pursuant to law, including but not limited to—

(1) construction, acquisition, and replacement of (i) the transmission system, including facilities and structures appurtenant thereto, and (ii) additions, improvements, and betterments thereto (hereinafter in this Act referred to as "transmission system");

(2) operation, maintenance, repair, and relocation, to the extent such relocation is not provided for under subsection (1) above, of the transmission system;

(3) electrical research, development, experimentation, test, and investigation related to construction, operation, and maintenance of transmission systems and facilities;

(4) marketing of electric power;

(5) transmission over facilities of others and rental, lease, or lease-purchase of facilities;

(6) purchase of electric power (including the entitlement of electric plant capability) (i) on a short-term basis to meet temporary deficiencies in electric power which the Administrator is obligated by contract to supply, or (ii) if such purchase has been heretofore authorized or is made with funds expressly appropriated for such purchase by the Congress, (iii) if to be paid for with funds provided by other entities for such purpose under a trust or agency arrangement, or (iv) on a short term basis to meet the Administrator's obligations under section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act;

(7) defraying emergency expenses or insuring continuous operation;

(8) paying the interest on, premiums, discounts, and expenses, if any, in connection with the issuance of, and principal of all bonds issued under section 13(a) of this Act, including provision for and maintenance of reserve and other funds established in connection therewith;

(9) making such payments to the credit of the reclamation fund or other funds as are required by or pursuant to law to be made into such funds in connection with reclamation projects in the Pacific Northwest: *Provided*, That this clause shall not be construed as permitting the use of revenues for repayment of costs allocated to irrigation at any project except as otherwise expressly authorized by law;

(10) making payments to the credit of miscellaneous receipts of the Treasury for all unpaid costs required by or pursuant to law to be charged to and returned to the general fund of the Treasury for the repayment of the Federal investment in the Federal Columbia River Power System from electric power marketed by the Administrator;

(11) acquiring such goods and services, and paying dues and membership fees in such professional, utility, industry, and other societies, associations, and institutes, together with expenses related to such memberships, including but not limited to the acquisitions and payments set forth in the general provisions of the annual appropriations Act for the Department of Energy, as the Administrator determines to be necessary or appropriate in carrying out the purposes of this Act; and

(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act.

(c) Moneys heretofore or hereafter appropriated shall be used only for the purposes for which appropriated, and moneys received by the Administrator in trust shall be used only for carrying out such trust. The provisions of the Government Corporation Control Act (31 U.S.C. 841 et seq.) shall be applicable to the Administrator in the same manner as they are applied to the wholly owned Government corporations named in section 101 of such Act (31 U.S.C. 846), but nothing in the proviso of section 850 of title 31, United States Code, shall be construed as affecting the powers granted in subsection (b)(11) of this section and in sections 2(f), 10(b), and 12(a) of the Bonneville Project Act (16 U.S.C. 832 et seq.).

(d) Notwithstanding the provisions of sections 105 and 106 of the Government Corporation Control Act, the financial transactions of the Administrator shall be audited by the Comptroller General at such times and to such extent as the Comptroller General deems necessary, and reports of the results of each such audit shall be made to the Congress within 6½ months following the end of the fiscal year covered by the audit. (88 Stat. 1378; § 11, Act of August 4, 1977, 91 Stat. 578 § 8, Act of December 5, 1980, 94 Stat. 2728; 16 U.S.C. § 838i)

EXPLANATORY NOTES

1980 Amendment. Subsections 8(a) and (b) of the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980, Public Law 96-501, 94 Stat. 2728) amended subsection 11(b) by adding clause (iv) to paragraph (6) and adding paragraph (12). The 1980 Act appears in Volume IV in chronological order.

1977 Amendment. Section 302(a)(1)(D) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 578) substituted "Secretary of Energy" for "Secretary of Interior" in subsection (a) of the text and "Department of Energy" for "Department of the Interior" in subsection (b)(11). Extracts from the 1977 Act appear in Volume IV in chronological order.

Reference in the Text. The Government Corporation Control Act, referred to in subsections (a) and (b) of the text, has been recodified at 31 U.S.C. §§ 9101-09. It does not appear herein.

INVESTMENT OF EXCESS FUNDS

Sec. 12. (a) If the Administrator determines that moneys in the fund are

in excess of current needs he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in direct, general obligations of, or obligations guaranteed as to both principal and interest by, the United States of America.

(b) With the approval of the Secretary of the Treasury, the Administrator may deposit moneys of the fund in any Federal Reserve bank or other depository for funds of the United States of America, or in such other banks and financial institutions and under such terms and conditions as the Administrator and the Secretary of the Treasury may mutually agree. (88 Stat. 1378; 16 U.S.C. § 838)

REVENUE BONDS

Sec. 13. (a) The Administrator is authorized to issue and sell to the Secretary of the Treasury from time to time in the name and for and on behalf of the Bonneville Power Administration bonds, notes, and other evidences of indebtedness (in this Act collectively referred to as "bonds") to assist in financing the construction, acquisition, and replacement of the transmission system, to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from a generating facility having a planned capability greater than 50 average megawatts), and to issue and sell bonds to refund such bonds. Such bonds shall be in such forms and denominations, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds, the useful life of the facilities for which the bonds are issued, and financing practices of the utility industry. Refunding provisions may be prescribed by the Administrator. Such bonds shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus an amount in the judgment of the Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the market for similar bonds issued by Government corporations. Beginning in fiscal year 1982, if the Administrator fails to repay by the end of any fiscal year all of the amounts projected immediately prior to such year to be repaid to the Treasury by the end of such year under the repayment criteria of the Secretary of Energy and if such failure is due to reasons other than (A) a decrease in power sale revenues due to fluctuating streamflows or (B) other reasons beyond the control of the Administrator, the Secretary of the Treasury may increase the interest rate applicable to the outstanding bonds issued by the Administrator during such fiscal year. Such increase shall be effective commencing with the fiscal year immediately following the fiscal year during which such failure occurred and shall not exceed 1 per centum for each such fiscal year during which such repayments are not in accord with such criteria. The Secretary

of the Treasury shall take into account amounts that the Administrator has repaid in advance of any repayment criteria in determining whether to increase such rate. Before such rate is increased, the Secretary of the Treasury, in consultation with the Administrator and the Federal Energy Regulatory Commission, must be satisfied that the Administrator will have the ability to pay such increased rate, taking into account the Administrator's obligations. Such increase shall terminate with the fiscal year in which repayments (including repayments of the increased rate) are in accordance with the repayment criteria of the Secretary of Energy. The aggregate principal amount of any such bonds outstanding at any one time shall not exceed $1,250,000,000 prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional $1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds.

(b) The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Administrator's net proceeds as hereinafter defined. "Net proceeds" shall mean for the purposes of this section the remainder of the Administrator's gross receipts from all sources after first deducting trust funds and the costs listed in section 11(b)(2) through 11(b)(7), 11(b)(11), and 11(b)(12), and shall include reserve or other funds created from such receipts.

(c) The Secretary of the Treasury shall purchase forthwith any bonds issued by the Administrator under this Act and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act,as now or hereafter in force, are extended to include any purchases of the bonds issued by the Administrator under this Act. The Secretary of the Treasury may, at any time, sell any of the bonds acquired by him under this Act. All redemptions, purchases, and sales by the Secretary of the Treasury of such bonds shall be treated as public debt transactions of the United States. (88 Stat. 1380; § 8, Act of December 5, 1980, 94 Stat. 2728; 26 U.S.C. § 838k)

EXPLANATORY NOTES

1980 Amendment. Section 8 of the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980 Public Law 96-501, 94 Stat. 2728) amended subsection 13(a) by inserting in the first sentence the reference to implementing the 1980 Act; by adding the words "issued by Government corporations" to the end of the fourth sentence; by adding the fifth through ninth sentences authorizing the Secretary of the Treasury to impose a penalty interest charge for failure to make projected repayment on appropriated debt; and by adding the language after "$1,250,000,000" in the last sentence which increased the borrowing authority. The 1980 Act also added the reference to "11(b)(12)" in subsection 13(b). The 1980 Act appears in Volume IV in chronological order.

Legislative History. S. 3362, Public Law

93-454 in the 93d Congress. Reported in Senate from Interior and Insular Affairs July 25, 1974; S. Rept. No. 93-1030. Passed Senate July 30, 1974. Reported in House from Interior and Insular Affairs September 25, 1974; H.R. Rept. No. 93-1375. Passed House October 7, 1974.

RECLAMATION DEVELOPMENT ACT OF 1974

An act to authorize, enlarge, and repair various Federal reclamation projects and programs, and for other purposes. (Act of October 27, 1974, Public Law 93-493, 88 Stat. 1486)

[Short title.]—This Act shall be known as "The Reclamation Development Act of 1974".

TITLE I

INCORPORATION OF PAGE, ARIZONA

Sec. 101. [Purpose.]—It is the purpose of this title to separate that unincorporated area in Coconino County in the State of Arizona, commonly known as the town of Page, Arizona, from the Colorado River storage project in order that the United States may withdraw from the ownership and operation of the town and the people of that area may enjoy self-government, and to facilitate the establishment by the people of a municipal corporation under the laws of the State of Arizona by the transfer of certain Federal property described in section 103 of this title. (88 Stat. 1486)

Sec. 102. [Definitions.]—The following definitions shall apply to terms used in this title.

(a) The area referred to herein as Page, Arizona, includes the following described land:

* * * * *

[Boundary description omitted, 88 Stat. 1486.]

* * * * *

The boundary of Page, Arizona, is shown on drawing numbered 557-431-83, entitled "Page, Arizona. Townsite Boundary" which is on file in the Office of the Commissioner of Reclamation, Washington, District of Columbia.

(b) The term "municipality" shall mean Page, Arizona, after its incorporation as a municipality under the laws of the State of Arizona.

(c) The term "Secretary" shall mean the Secretary of the Interior.

(d) The term "municipal facilities" shall mean certain land, and the improvements thereon, in Page, Arizona, such as hospital, police, and fire protection systems, sewage and refuse disposal plants, water treatment and distribution facilities, streets and roads, parks, playgrounds, airport, cemetery, municipal government buildings, and other properties suitable or usable for local municipal purposes, including any fixtures, equipment, or other property appropriate to the operation, maintenance, replacement, or

repairs of the foregoing, which are owned by the United States and under the jurisdiction of the Department of the Interior, Bureau of Reclamation, on the date of incorporation of Page, Arizona. (88 Stat. 1486)

Sec. 103. [Transfer of lands, improvements, facilities, activities, and functions—Assignment of leases and contracts.]—Upon incorporation of Page, Arizona, as a municipality under the statutes of the State of Arizona, the Secretary shall:

(a) Transfer to the municipality without cost, subject to any existing leases granted by the United States, all improved or unimproved lands within Page, Arizona, owned by the United States, which the Secretary determines are not required in the administration, operation, and maintenance of Federal activities within or near Page, Arizona, and can properly be included within the municipality under the laws of the State of Arizona, except the land to be transferred pursuant to subsection (c) hereof, and to assign to the municipality without cost any leases granted by the United States on such land.

(b) Transfer to the appropriate school district without cost all right, title, and interest of the United States to the land in block 14-A and lot 1, block 16, as shown on the United States Department of the Interior, Bureau of Reclamation drawing numbered 557-431-87, April 29, 1971, which drawing is on file in the Office of the Commissioner of Reclamation, Washington, District of Columbia, together with improvements thereon owned by the United States at the time of the transfer.

(c) Transfer to the municipality without cost all rights, title, and interest of the United States in and to any land, and the improvements thereon, which may be contained in any reversionary clause of any dedication deed for land in Page, Arizona, issued by the United States.

(d) Transfer all activities and functions of a municipal character being performed by the United States to the municipality subject to the provisions of sections 104 and 107 of this title.

(e) Transfer to the municipality without cost the municipal facilities, as defined in subsection 102(d) of this title, except as provided under subsection 104(a) of this title.

(f) Assign to the municipality without cost those contracts to which the United States is a party, and which pertain to activities or functions to be transferred under subsection (c) of this section and are properly assignable. This shall include contracts for furnishing water outside the boundaries of Page, Arizona, utilizing the municipal system: *Provided*, That the contract which the United States has executed with a private utility for furnishing and distributing electrical energy to the municipality shall be assigned to the municipality upon its request: *And provided further*, That in the assignment of the contract for the operation of the Page Hospital the operating fund balance under said contract, together with all hospital accounts receivable, shall be transferred to the municipality for the same purpose as a part of the assignment of said contract. (88 Stat. 1487)

Sec. 104. [Water supply contract—Limit on consumptive use—United States to retain title of pumping and conveyance system—Operation of

retained facilities—Schedule of payments by municipality—Water system beyond Glen Canyon Dam.]—There is hereby reserved for the Glen Canyon unit, Colorado River storage project, the consumptive use of not to exceed three thousand acre-feet of water per year from Lake Powell, of which not to exceed two thousand seven hundred and forty acre-feet of consumptive use of water are hereby assigned to the municipality, consistent with the Navajo Tribal Council resolution numbered CJN-50-69, dated June 3, 1969: *Provided,* That upon incorporation the municipality shall enter into a contract satisfactory to the Secretary covering payment for and delivery of such water pursuant to the Colorado River Storage Project Act of June 11, 1956 (70 Stat. 105), which contract shall among other things provide that:

(a) The reservation and assignment of the consumptive use of water from Lake Powell under this section shall be subject to the apportionments of consumptive use of water to the State of Arizona in article III of the Colorado River Compact and article III(a)(1) of the Upper Colorado River Basin Compact.

(b) Title to the water pumping and conveyance systems within the Glen Canyon Dam and powerplant necessary to supply water to the municipality for culinary, industrial, and municipal purposes shall be retained by the United States until the Congress provides otherwise.

(c) Such retained facilities shall be operated and maintained by the Secretary at the expense of the United States until termination of the fifth fiscal year following the year of incorporation. Not to exceed two thousand seven hundred and forty acre-feet of water per annum or three million gallons of water in any twenty-four-hour period, will be pumped by the United States from Lake Powell to the water treatment plant, or to such intermediate points of delivery as shall be mutually agreed upon by the municipality and the United States for use by the municipality.

(d) Beginning with the sixth year following incorporation and continuing through the tenth year, the municipality shall in each year pay to the United States proportionately increasing increments of the annual costs, including depreciation of the pumping equipment, involved in subsection (c) above with the objective that following the close of said tenth year the municipality shall thereafter bear such costs in total, according to the following schedule:

Year following incorporation:	Portion of cost in subsection (c) of section 104 to be paid to United States each year by municipality (per centum)
Sixth	20
Seventh	40
Eighth	60
Ninth	80
Tenth	80
Thereafter	100

(e) Upon incorporation and at all times thereafter, the municipality shall bear all costs for operation, maintenance, and replacement of the municipal water system beyond Glen Canyon Dam and powerplant, including but not limited to filtration, treatment, and distribution of water supplied pursuant to the water service contract with the United States. (88 Stat. 1488)

Sec. 105. [Completion of community programs.]—As soon as reasonably practicable after incorporation of the community, the Secretary is hereby authorized to complete all or any part of the following work which has not been completed at the date of incorporation.

(a) Take census of population of the municipality within one year following incorporation.

(b) Repair existing twelve-inch water supply line, if inspection determines this is necessary.

(c) Paint interior of water storages reservoirs.

(d) Seal coat paved streets in municipality.

(e) Install water sprinkler system in Page cemetery.

(f) Improve streets, install curbs, gutters, and sidewalks as follows:

(1) North Navajo Drive:

(i) Pave streets to seventy-foot width from Ninth Avenue to relocated intersection of Aero Avenue and sixty-one-foot width from Aero Avenue to Tenth Avenue.

(ii) Place curb, gutter, and sidewalk on east side of North Navajo Drive from Aero Avenue to tenth Avenue.

(2) Aero Avenue from North Navajo Drive to Future Street:

(i) Widen existing thirty-foot paved width to seventy-foot paved width.

(ii) Place curb, gutter, and sidewalk on both sides of street.

(3) Tenth Avenue from Future Street to Sandstone Street:

(i) Construct new pavement on north half of street and overlay south half of street.

(ii) Place curb and gutter only on north side of street.

(4) Future Street—Approximately two thousand one hundred and fifty feet beginning at Tenth Avenue and bordering east side of block 101 as shown on Page townsite and block plats:

(i) Pave street to fifty-two-foot width.

(ii) Place curb, gutter, and sidewalk on west side of street and curb and gutter only on east side of street.

(5) Hopi Avenue from Oak Avenue to west boundary of block 101:

(i) Pave street to forty-two-foot width.

(ii) Place curb, gutter and sidewalk on north side.

(iii) Place curb and gutter only on south side.

(g) Construct paved access road from United States Highway Numbered 89 to site of new sanitary landfill to be located in the northwest quarter, section 20, township 41 north, range 8 east, Gila and Salt River meridian, Arizona: *Provided,* That in the performance of the work authorized in this section, the Secretary may either cause the work to be done or transfer funds to the municipality for this purpose after ascertaining that each segment of work will be accomplished by a date certain and to standards satisfactory to the Secretary. (88 Stat. 1489)

Sec. 106. [Payments to municipality.]—(a) Upon incorporation the Secretary is authorized to make a lump-sum payment of $500,000 to the municipality as assistance to the municipality in meeting the expenses of police

and fire protection facilities and services, sewage system, refuse disposal, electrical distribution system, water treatment and distribution, streets and roads, library, park, playgrounds and other recreational facilities, municipal government buildings, and other properties and services required for municipal purposes.

(b) To make a lump-sum payment of $50,000 to the municipality for improvements to the Page Hospital. (88 Stat. 1489)

Sec. 107. [Services of Federal personnel—Limitations.]—Upon incorporation, the United States will provide to the municipality, upon its request, the services of Federal personnel, while they are employed by the United States in the operation and maintenance of the Glen Canyon unit of the Colorado River storage project, to assist in the transition from a federally administered community to a self-governing municipal corporation: *Provided*, That such assistance shall be for a maximum of six months following the date of incorporation: *And provided further*, That the total number of such employees shall be limited to ten at any time. (88 Stat. 1489)

Sec. 108. (a) [Prohibition on use of certain funds.]—Except as herein specifically provided, no assets of the Colorado River storage projects or moneys of the Upper Colorado River Basin Fund shall be utilized after incorporation of the municipality for carrying out the provisions of this Act.

(b) [Distribution of electric power by public utility—Transfer of funds and repayment provisions if municipality acquires electric power distribution system.]—At the election of the municipality, the United States shall make electric power and associated energy available to the municipality from the Colorado River storage project at the 69 kilovolt bus of the existing power substation at scheduled rates effective from time to time for resale by the municipality to an electric utility: *Provided*, That the sale agreement between the municipality and such utility is completed before August 1, 1976: *And provided further*, That in lieu of such purchase and resale, there is hereby authorized to be appropriated from the Upper Colorado River Basin Fund and thereupon transferred to the municipality the amount necessary for the municipality to acquire the electric distribution facilities in Page, Arizona, in the event the municipality decides before August 1, 1976, to acquire said facilities through the exercise of its powers of eminent domain or the amount necessary for the municipality to acquire such facilities in accordance with the terms and conditions of the contract with the utility supplying the electricity, in the event the municipality exercises the option in said contract to acquire said electric distribution facilities: *Provided*, That the municipality agrees to repay with interest the amount of the funds so transferred in twenty equal annual installments: *Provided*, That the funds so repaid and the accrued interest thereon will be deposited in the Treasury to the credit of the aforesaid Upper Colorado River Basin Fund. The interest rate used for computing interest on the unpaid balance of funds transferred to the municipality for purposes of this subsection shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal

year in which the incorporation of Page, Arizona, occurs, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (88 Stat. 1490)

Sec. 109. [Transfer of land to be held in trust for Navajo Tribe—Legal description.]—The Secretary of the Interior is authorized to transfer to the United States to be held in trust for the Navajo Tribe title to a tract of land situated within the southeast quarter of the southeast quarter, section 8, the southwest quarter, section 9, section 16, the east half of the northeast quarter, section 17, section 21, and the northeast quarter of the northeast quarter, section 28, all in township 41 north, range 9 east, Gila and Salt River meridian, Coconino County, Arizona, and containing eight hundred and eight acres, more or less, of which the particular description and drawing (Numbered 557-431-38 "Navajo Tribe—Antelope Creek Recreation Development Area Survey Traverse" dated May 22, 1969) are on file and available for public inspection in the office of the Bureau of Reclamation, Department of the Interior. The transfer of title to such land is made in consideration of Navajo Council Resolution Numbered CNJ-50-69 dated June 3, 1969, and with the understanding that the land so transferred shall thereafter constitute a part of the Navajo Reservation and shall be subject to all laws and regulations applicable to that reservation. (88 Stat. 1490)

Sec. 110. [Navajo Tribal Council Resolutions.]—The Congress hereby directs the Secretary of the Interior to facilitate the effectuation of Navajo Tribal Council Resolutions CD 108-68 and CJN-50-69, subject to the provisions of the Colorado River Basin Project Act (82 Stat. 885). (88 Stat. 1490)

Sec. 111. [Powers of the Secretary.]—The Secretary is hereby authorized, subject only to the provisions of this title to perform such acts, to delegate such authority, and to prescribe such rules and regulations, and establish such terms and conditions as he may deem necessary and appropriate for the purpose of carrying out the provisions of this title. (88 Stat. 1491)

Sec. 112. [Use of Upper Colorado River Basin Fund authorized—Limitations.]—The Upper Colorado River Basin Fund established pursuant to section 5 of the Act of April 11, 1956 (70 Stat. 105), shall be utilized as appropriate for carrying out the provisions of this title: *Provided,* That the total expenditures from the fund shall not exceed $4,000,000. Payments made under the provisions of section 105 and section 106 of this title, and transfer, made under the provisions of subsection 108(b) will be made from revenues accruing to said basin fund from the sale of power from the Upper Colorado River storage project. (88 Stat. 1491)

Sec. 113. [Termination date unless incorporation achieved.]—All authority of the Secretary under sections 101 through 112 of this title shall terminate five years following date of enactment unless incorporation of Page, Arizona, shall previously have been achieved. (88 Stat. 1491)

Sec. 114. [Short title.]—This title may be cited as the "Page, Arizona, Community Act of 1974". (88 Stat. 1491)

EXPLANATORY NOTE

Not Codified. Title I of this Act is not codified in the U.S. Code.

TITLE II

CIBOLO PROJECT, TEXAS

Sec. 201. [Construction authorized—Application of reclamation laws—Features.]—The Secretary of the Interior is authorized to construct, operate, and maintain the Cibolo project, Texas, in accordance with the Federal reclamation laws (Act of June 17,1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the report of the Secretary on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purposes of storing, regulating, and furnishing water for municipal and industrial use, conserving and developing fish and wildlife resources, providing outdoor recreation opportunities, and controlling floods. The principal features of the project shall consist of a dam and reservoir on Cibolo Creek and public outdoor recreation facilities. (88 Stat. 1491)

Sec. 202. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the project is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (88 Stat. 1491)

Sec. 203. [Repayment contract—Condition precedent to construction—Transfer of project upon completion to qualified contracting entity—Fish and wildlife and recreation cost allocation—Permanent right to use of reservoir.]—(a) The Secretary is authorized to enter into a contract with a qualified entity or entities, for delivery of water and for repayment of all the reimbursable construction costs.

(b) Construction of the project shall not be commenced until a suitable contract has been executed by the Secretary with a qualified entity or entities.

(c) Such contract may be entered into without regard to the last sentence of section 9, subsection (c), of the Reclamation Project Act of 1939.

(d) Upon execution of the contract referred to in subsection 203(a) above, and upon completion of construction of the project, the Secretary shall transfer to a qualified contracting entity or entities the care, operation, and maintenance of the project works; and, after such transfer is made will reimburse the contractor annually for that portion of the year's joint operation and maintenance costs which, if the United States had continued to operate the project, would have been allocated to flood control, fish and

wildlife, and recreation purposes. Prior to assuming care, operation, and maintenance of the project works the contracting entity or entities shall be obligated to operate them in accordance with regulations prescribed by the Secretary of the Army with respect to flood control, and by the Secretary of the Interior with respect to fish and wildlife and recreation.

(e) Upon execution of the contract referred to in subsection 203(a) above, and upon completion of construction of the project, the contracting entity or entities, their designee or designees, shall have a permanent right to use the reservoir and related facilities of the Cibolo project in accordance with said contract. (88 Stat. 1491)

EXPLANATORY NOTE

Reference in the Text. The last sentence of subsection (c) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187, 43 U.S.C. § 485 et seq.), referred to in section 203(c) of the text, reads: "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." The sentence appears in Volume I at page 648.

Sec. 204. [Fish and wildlife and recreation.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Cibolo project shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213). (88 Stat. 1492)

Sec. 205. [Appropriation authorized—Conditions—Discount rate.]—There is hereby authorized to be appropriated to defray construction costs of the Cibolo reclamation project allocable to flood control, fish and wildlife, and recreation the sum of $24,160,000 (July 1973 prices) plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein: *Provided*, That prior to appropriation of any Federal funds the San Antonio River authority shall, pursuant to a contract satisfactory to the Secretary of the Interior, agree to advance funds for postauthorization planning and construction of the Cibolo reclamation project. The amount of funds to be advanced annually shall be in the proportion to the total annual fund requirements for the project as the construction cost allocated to municipal and industrial water is to the total cost of the project: *Provided further*, That the sum of funds advanced shall not exceed the total project cost allocated to municipal and industrial water. There are also authorized to be appropriated such additional sums as may be required for the operation and maintenance of the project. The discount rate to be used by the Secretary for allocating costs of the works authorized herein shall be the rate for the fiscal year of passage of this Act as derived by the Secretary of the Treasury utilizing the formula set forth in Senate Document Numbered 97, Eighty-seventh Congress, second session, as revised by the Water Resources Council announcement in the Federal Register of December 24, 1968. (88 Stat. 1492)

EXPLANATORY NOTE

Codification Omitted. Title II of this Act originally was codified at 43 U.S.C. §§ 600f to 600f-4 but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

TITLE III

MOUNTAIN PARK PROJECT, OKLAHOMA

Sec. 301. [Water supply for Frederick, Oklahoma—Mountain Park Project Act amended.]—In order to provide for the construction, operation, and maintenance of facilities to deliver a water supply to the city of Frederick, Oklahoma, from the Mountain Park reclamation project section 1 of Public Law 90-503 (82 Stat. 853) is amended by deleting "Altus and Snyder, Oklahoma," and substituting therefor "Altus, Snyder, and Frederick, Oklahoma." (88 Stat. 1492)

Sec. 302. [Increase in appropriation authorized.]—The amount which section 6 of said Act authorizes to be appropriated is hereby further increased by the sum of $6,057,000 (January 1974 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicted by engineering costs indexes applicable to the type of construction involved herein. (88 Stat. 1492)

EXPLANATORY NOTES

Codification Omitted. Sections 301 and 302 originally were codified at 43 U.S.C. §§ 616aaaa and 616ffff-1 but were omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Reference in the Text. Public Law 90-503 (enacted September 21, 1968), referred to in sections 301 and 302 of the text, authorized the construction of the Mountain Park Reclamation Project, Oklahoma. The 1968 Act appears in Volume IV in chronological order.

TITLE IV

CASITAS RESERVOIR OPEN SPACE, CALIFORNIA

Sec. 401. [Purpose—Secretary authorized to acquire certain lands.]—In order to provide for protection of the quality of water in Lake Casitas, and to provide for the preservation and enhancement of public outdoor recreation, fish and wildlife, and the environment of the area, the Secretary of the Interior is hereby authorized to acquire in the name of the United States certain privately owned lands within townships 3 and 4 north, ranges 23 and 24 west, San Bernardino base and meridian, lying outside the boundaries of the Los Padres National Forest, as generally depicted on the drawing entitled "Private Lands in Casitas Reservoir Watershed", numbered 767-208-237, and dated September 1972, which is on file and available for public inspection in the offices of the Bureau of Reclamation, Department of the Interior. (88 Stat. 1493)

Sec. 402. [Acquisition of lands—Limitations and conditions.]—(a) Within the area described in section 401 of this title, the Secretary may

acquire such lands by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That any lands owned by the State of California or any political subdivision thereof may be acquired only by donation.

(b) With respect to any property acquired for the purposes of this title, which is beneficially owned by a natural person and which the Secretary determines can be continued in private use for a limited period of time without undue interference with the administration and public use of the area, the owner may on the date of its acquisition by the Secretary retain a right of use and occupancy of such property for agricultural or noncommercial residential purposes for a term, as the owners may elect, ending either—

(1) at the death of the owner or spouse, whichever occurs later, or

(2) not more than twenty-five years from the date of acquisition.

Any right so retained may, during its existence, be transferred or assigned. The Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(c) The Secretary may terminate the right of use and occupancy, retained pursuant to this section, upon his determination that such a right is being exercised in a manner not consistent with the purposes of this title and upon tender to the holder of the right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination.

(d) For the purposes of this title, "noncommercial residential property" shall mean any single family residence in existence or under construction as of July 1, 1974. (88 Stat. 1493)

Sec. 403. [Administration and management.]—The Secretary shall administer the lands to be acquired in accordance with the provisions of section 4 of the Act of July 9, 1965 (79 Stat. 213), and may issue such licenses, permits, or leases, or take such other action as may be required for proper management in accordance therewith. The lands will be kept in their natural state as permanent open space and may be managed by the Casitas Municipal Water District, or any other authorized non-Federal public body, as part of the Lake Casitas Recreation Area. (88 Stat. 1493)

EXPLANATORY NOTE

Reference in the Text. The Act of July 9, 1965 (Public Law 89-72, 79 Stat. 213), referred to in section 403 of the text, is the Federal Water Project Recreation Act. Section 4 of the Act appears in Volume III at page 1823.

Sec. 404. [Appropriation authorized—Nonreimbursable.]—There is authorized to be appropriated the sum of $10,000,000 (April 1974 price levels) plus or minus such amounts as may be justified by changes in the price indexes for agricultural and noncommercial residential property in Ventura County, California. All funds authorized to be appropriated by this title shall be nonreimbursable. (88 Stat. 1493)

EXPLANATORY NOTE

Not Codified. Title IV of this Act is not codified in the U.S. Code.

TITLE V

KLAMATH PROJECT RIGHT-OF-WAY, OREGON

Sec. 501. [Conveyance of abandoned right-of-way.]—The Secretary of the Interior is hereby authorized and directed to convey by quitclaim deed to the respective owners of record of those certain lots situated in those subdivisions of Klamath Falls, Oregon, respectively known as Mills Addition, Enterprise Tracts. Mills Garden, Old Orchard Manor, Sixth Street Addition, and Subdivision Block 803, and as such officially shown on the recorded plats of the city records, all right, title, and interest of the United States in the specific tracts of land now owned by the United States which collectively constitute the abandoned Klamath reclamation project "B" lateral canal right-of-way, as designated for general location purposes on Bureau of Reclamation drawing numbered 12-208-338, dated March 27, 1970, and filed for reference purposes in both the Klamath County recorder's office and the corresponding records of the city of Klamath Falls, to the extent that any such tract would constitute a contiguous addition to each of the lots in the above-named subdivisions if the boundaries of each of said lots were to be extended to include the affected portion of above-cited public lands of the United States. Such conveyance shall, in each instance, be made only upon application therefor by the owner of record of one of the affected lots within one year of the date of this Act: *Provided*, That said owner of record shall, to the satisfaction of the Secretary of the Interior, support such application at time of filing same with proof of ownership and an adequate description of the exterior boundaries of the parcel of Government interest land applied for. The Secretary of the Interior is authorized, as determined appropriate by him, to require payment of not more than $100 per parcel of Government interest land applied for in addition to the cost of such conveyance. (88 Stat. 1494)

Sec. 502. [Waiver and release of claims against the United States.]—Acceptance of any conveyance made hereunder by any applicant shall constitute a complete and unconditional waiver and release by said applicant or applicants individually or collectively of any and all claims against the United States arising from or occasioned by use of the land by said applicant or his successors in interest. (88 Stat. 1494)

EXPLANATORY NOTE

Not Codified. Title V of this Act is not codified in the U.S. Code.

TITLE VI

SOLANO PROJECT RECREATIONAL FACILITIES, CALIFORNIA

Sec. 601. [Lake Berryessa—Development of short-term recreation facilities—Review of existing facilities—Corrective procedures—Admin-

istration of public recreation facilities.]—In order to provide for the protection, use, and enjoyment of the esthetic and recreational values inherent in the Federal lands and waters at Lake Berryessa, Solano project, California, the Secretary of the Interior is hereby authorized to develop, operate, and maintain such short-term recreation facilities as he deems necessary for the safety, health, protection, and outdoor recreational use of the visiting public; to undertake a thorough and detailed review of all existing developments and uses on Federal lands to determine their compatibility with preservation of environmental values and their effectiveness in providing needed public services; to implement corrective procedures when necessary; and to otherwise administer the Federal land and water areas associated with said Lake Berryessa in such a manner that, in his opinion, will best provide for the public recreational use and enjoyment thereof, all to such an extent that said use is not incompatible with other authorized functions of the Solano project. (88 Stat. 1494)

NOTES OF OPINIONS

NEPA 1
Removal of private property 2

1. NEPA

The change in recreation management at Lake Berryessa from Napa County to the United States, in accord with section 601 of the Reclamation Development Act of 1974, and subsequent Bureau of Reclamation directives restricting the use of houseboats on the lake and ordering the removal of privately-owned floating structures from the lake, do not constitute major Federal actions having a significant effect on the quality of the human environment within the meaning of section 102 of the National Environmental Policy Act. *Lake Berryessa Tenants' Council v. United States*, 588 F.2d 267 (9th Cir. 1978).

2. Removal of private property

Where, pursuant to section 601 of the Reclamation Development Act of 1974, the Bureau of Reclamation assumed management of Lake Berryessa recreation concessions, there was no unconstitutional taking involved in the Government's restricting the use of houseboats on the lake and ordering the removal from the lake of all privately-owned floating structures such as docks, berths, swim floats, etc., except those owned by the seven resort concessionaires on the lake. As all of the land and water at the lake is owned by the United States, which has allowed the docks and houseboats to be located there at its sufference, the requested removal does not create a cause of action for an unconstitutional taking in the dock and houseboat owners, who lack any colorable interest or estate in the property. Nor is there any evidence that the Bureau's action was arbitrary, capricious or contrary to any statutory or constitutional provisions. *Lake Berryessa Tenant's Council v. United States*, 588 F.2d 267 (9th Cir. 1978).

Sec. 602. [Rules and regulations—Management by non-Federal agency—Collection of fees authorized.]—The Secretary of the Interior shall make such rules and regulations as are necessary to carry out the provisions of this title and may enter into an agreement or agreements with the State of California, or political subdivision thereof, or a non-Federal agency or agencies or organizations as appropriate, for the development of a recreation management plan, and for the management of recreation including the operation and maintenance of the facilities within the area. The agency performing the recreation management functions is authorized to establish and collect fees for the use of recreation facilities. (88 Stat. 1494)

Sec. 603. [Authorization of appropriations.]—There is authorized to be appropriated to the Secretary of the Interior the sum of $3,000,000

(April 1974 price levels) plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in development costs as indicated by cost indexes applicable to the types of development involved herein. There is also authorized to be appropriated such sums as may be necessary for administration of existing facilities and for operation and maintenance of the facilities authorized by this title. (88 Stat. 1495)

Sec. 604. [Nonreimbursable funds.]—All funds authorized to be appropriated by this title shall be nonreimbursable. (88 Stat. 1495)

EXPLANATORY NOTE

Not Codified. Title VI of this Act is not codified in the U.S. Code.

NOTE OF OPINION

1. Concessionaire contract rights

The Tucker Act, giving exclusive jurisdiction to the Court of Claims to decide claims against the United States founded on the Constitution, Acts of Congress, agency actions, or contracts with the United States, applies only to claims for money damages. It does not preclude an action in a District Court requesting a declaratory judgment stating that a concessionaire providing public use facilities at Lake Berryessa of the Solano Project has contract rights against the United States. *Laguna Hermosa Corp. v. Martin*, 643 F.2d 1376 (9th Cir. 1981).

TITLE VII

MISCELLANEOUS DRAINAGE CONSTRUCTION, UTAH

Sec. 701. [Vernal Unit, Central Utah project and Emery County project—Drainage construction—Amend repayment contracts.]—The Secretary of the Interior is authorized to construct drainage facilities for the Vernal Unit of the Central Utah project and the Emery County project to the extent that he determines necessary for the sustained crop production on the irrigable lands of these projects. The Secretary is further authorized to negotiate and execute amendments to contract numbered 14-06-400-778, dated July 14, 1958, between the United States and the Uintah Water Conservancy District and contract numbered 14-06-400-2427, dated May 15, 1962, between the United States and the Emery Water Conservancy District to provide for the cost of such drainage works to be paid from the Colorado River storage project basin fund with repayment to be based on ability of irrigation water users to repay as determined by the Secretary. (88 Stat. 1495)

EXPLANATORY NOTE

Not Codified. Title VII of this Act is not codified in the U.S. Code.

TITLE VIII

BELLE FOURCHE DAM REHABILITATION, SOUTH DAKOTA

Sec. 801. [Construction of spillway and upstream slope protection authorized.]—The Secretary of the Interior is authorized to construct, op-

erate, and maintain an adequate spillway and to improve the upstream slope protection of Belle Fourche Dam, Belle Fourche project, Belle Fourche, South Dakota, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and the provisions of this title. (88 Stat. 1495)

Sec. 802. [No increase in storage capacity—No reduction of existing reimbursable cost allotments.]—Construction authorized by this title shall be for the safety of Belle Fourche Dam and shall not provide additional conservation storage capacity or develop benefits over and above those provided by the original dam and reservoir. Nothing in this title shall be construed to reduce the amount of project costs allocated to reimbursable purposes heretofore authorized. (88 Stat. 1495)

Sec. 803. [Certain costs reimbursble—Amend repayment contracts—Nonreimbursable costs.]—Reimbursement of costs associated wtih improving upstream slope protection on Belle Fourche Dam shall be limited to an amount equal to the estimated annual savings to the Belle Fourche Irrigation District in operation and maintenance expense over the remaining life of the district's repayment contract with the United States. The Secretary is hereby authorized to enter into an amendatory repayment contract with the Belle Fourche Irrigation District to effect such reimbursement without interest. All other costs of construction authorized by this title shall be nonreimbursable. (88 Stat. 1495)

Sec. 804. [Appropriation authorized.]—There is hereby authorized to be appropriated for the construction authorized by this title the sum of $3,620,000 (April 1974 price levels) plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction involved. (88 Stat. 1495)

EXPLANATORY NOTE

Not Codified. Title VIII of this Act is not codified in the U.S. Code.

TITLE IX

GLENDO UNIT ROAD RECONSTRUCTION, WYOMING

Sec. 901. [Construction authorized.]—The Secretary of the Interior is authorized to relocate, reconstruct, and rehabilitate the road that was initially relocated in connection with the construction of Glendo Dam and Reservoir to provide a safe, durable two-lane highway for public use. (88 Stat. 1496)

Sec. 902. [Appropriation authorized.]—There is hereby authorized to be appropriated for the relocation, reconstruction, and rehabilitation of said highway the sum of $284,000 (January 1974 price levels) plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction cost indices applicable to the types of construction involved herein. (88 Stat. 1496)

EXPLANATORY NOTE

Not Codified. Title IX of this Act is not codified in the U.S. Code.

TITLE X

NUECES RIVER PROJECT, TEXAS

Sec. 1001. [Construction authorized—Application of Reclamation laws—Features.]—The Secretary of the Interior is authorized to construct, operate, and maintain the Nueces River project, Texas, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the report of the Secretary on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purposes of storing, regulating, and furnishing water for municipal and industrial use, conserving and developing fish and wildlife resources, and providing outdoor recreation opportunities. The principal features of the project shall consist of the Choke Canyon Dam and Reservoir on the Frio River and public outdoor recreation and sport fishing facilities. (88 Stat. 1496)

Sec. 1002. (a) [Costs allocated to municipal and industrial water supply—Repayment.]—Costs of the project, allocated to municipal and industrial water supply, shall be repayable to the United States in not more than forty years under either the provisions of the Federal reclamation laws or under the provisions of the Water Supply Act of 1958 (title III of Public Law 85–500, 72 Stat. 319, and Acts mandatory thereof or supplementary thereto): *Provided,* That, in either case, repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance.

(b) [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the project allocated to municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the project is commenced, on the basis of the computed average interest payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (88 Stat. 1496)

Sec. 1003. [Repayment contract—Condition precedent to construction—Transfer of project upon completion to qualified contracting entity—Fish and wildlife and recreation cost allocation—Permanent right to use of reservoir.]—(a) The Secretary is authorized to enter into a contract with a qualified entity or entities, for delivery of water and for repayment of the balance of the reimbursable construction costs.

(b) Construction of the project shall not be commenced until a suitable contract has been executed by the Secretary with a qualified entity or entities.

(c) Such contract may be entered into without regard to the last sentence of section 9, subsection (c), of the Reclamation Project Act of 1939.

(d) Upon execution of the contract referred to in section 1003(a) above, and upon completion of construction of the project, the Secretary shall transfer to a qualified contracting entity or entities the care, operation, and maintenance of the project works, and, after such transfers is made, will credit annually against the contractors payment obligation that portion of the year's joint operation and maintenance costs which, if the United States had continued to operate the project, would have been allocated to fish and wildlife and recreation purposes. Prior to assuming care, operation, and maintenance of the project works the contracting entity or entities shall agree to operate them in accordance with regulations prescribed by the Secretary of the Interior with respect to fish and wildlife and recreation.

(e) Upon complete payment of the obligation assumed, including appropriate interest charges, the contracting entity or entities their designee or designees, shall have a permanent right to use the reservoir and related facilities of the Nueces River project in accordance with said contract. (88 Stat. 1496)

EXPLANATORY NOTES

Reference in the Text. The Water Supply Act of 1958 (enacted July 3, 1958, 43 U.S. § 390b), referred to in section 1002(a) of the text, appears in Volume II at page 1426.

Reference in the Text. The last sentence of subsection (c) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187, 43 U.S.C. § 485 et seq.), referred to in section 1003(c) of the text, reads: "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." The sentence appears in Volume I at page 648.

Sec. 1004. [Fish and wildlife and recreation.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Nueces River project shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213). (88 Stat. 1497)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89-72), referred to in the text, appears in Volume III at page 1820.

Sec. 1005. [Appropriation authorized—Local contribution required—Conditions—Right of local entity to terminate activities.]—There is hereby authorized to be appropriated for construction of the Nueces River project, Texas, the sum of $50,000,000 (January 1974 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein: *Provided,* That, prior to appropriation of any Federal funds, a qualified local entity shall, pursuant to a contract satisfactory to the Secretary, agree to advance on a schedule mutually acceptable to the local entity and the Secretary, the sum of not less

than $15,000,000 representing a non-Federal contribution toward implementation of this title.

Upon completion of the work authorized herein, the aforesaid $15,000,000 shall be applied as a credit to the repayment obligation of the local entity for municipal and industrial water service.

The Secretary is authorized and directed, upon receipt of the aforesaid advance to proceed with postauthorization planning, preparation of designs and specifications, land acquisition, and award of construction contracts pending availability of appropriated funds.

At any time following the first advance of funds by the local entity, said entity may request that the Secretary terminate activities then in progress, return unexpended balances of the funds so advanced, assign to the local entity the rights to any contract in force, convey any real estate acquired by the advanced funds and provide any data, drawings, or other items of value procured with advanced funds to the local entity; and such request shall be binding upon the Secretary. (88 Stat. 1497)

EXPLANATORY NOTES

Codification Omitted. Title X of this Act originally was codified at 43 U.S.C. §§ 600g to 600g-4 but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Right of Local Entity to Terminate Activities. The report of the Senate Committee on Interior and Insular Affairs states that section 1005 "also provides for termination of activities on the project at the request of the local contracting entity. The Committee understands, however, that the contract would not provide a unilateral right of termination to the local entity after Federal funds are expended on the project." S. Rept. No. 93-1208, 93d Cong., 2d Sess. 14 (1974). The report of the House Committee on Interior and Insular Affairs states that section 1005 permits the non-Federal entity advancing the funds to "terminate the contract and recapture unexpended funds, and/or assets purchased with the funds, at any time prior to the initial appropriation of Federal funds." H.R. Rept. No. 93-1206, 93d Cong., 2d Sess. 24 (1974).

TITLE XI

FRYINGPAN-ARKANSAS PROJECT, COLORADO

Sec. 1101. [Increase in appropriation authorized.]—Section 7 of the Act entitled "An Act to authorize the construction, operation, and maintenance by the Secretary of the Interior of the Fryingpan-Arkansas project, Colorado", approved August 16, 1962 (76 Stat. 389), is amended by striking out "$170,000,000 (June 1961 prices)" and inserting in lieu thereof "$432,000,000 (January 1974 price levels)". (88 Stat. 1497)

Sec. 1102. [Construction of second hydroelectric facility.]—For the purpose of increasing the hydroelectric generating capacity the Secretary of the Interior is authorized to construct, operate, and maintain a second one hundred-megawatt unit at the Mount Elbert pumped storage powerplant site of the Fryingpan-Arkansas project, Colorado. The funds required to construct such unit are included in the amount authorized to be appropriated by section 1101 of this title. (88 Stat. 1497)

TITLE XII

SAVAGE RAPIDS FISH WAY, OREGON

Sec. 1201. [Construction authorized—Operation and maintenance provisions.]—The Secretary of the Interior is hereby authorized and directed to construct the necessary facilities at Savage Rapids Dam, Grants Pass Division, Rogue River Basin, Oregon, to provide for improved anadromous fish passage at the dam. Such improvements will be substantially in accordance with the plan set forth in the joint special report of the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife entitled "Anadromous Fish Passage Facilities, Savage Rapids Dam, March 1974". Operation and maintenance of the facilities herein authorized will be in conformity with procedures developed by the Oregon State Game Commission and will be performed by the Grants Pass Irrigation District at no cost to the United States. (88 Stat. 1498)

Sec. 1202. [Application authorized.]—There is hereby authorized to be appropriated for construction of the facilities authorized by this Act the sum of $851,000 (April 1974 price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein. (88 Stat. 1498)

Sec. 1203. [Nonreimbursable costs.]—The cost of all construction authorized by this title shall be nonreimbursable. (88 Stat. 1498)

EXPLANATORY NOTE

Not Codified. Section 1102 and Title XII of this act are not codified in the U.S. Code.

TITLE XIII

FEASIBILITY STUDY AUTHORITIES

Sec. 1301. The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following potential water resource development programs:

(1) A total water management study to consider and coordinate the results of other water-related studies concerning Solano County, California.

(2) A municipal and industrial water supply delivery system for delivery or water to the city of Yuma, Arizona.

(3) The Apple Creek unit, Pick-Sloan Missouri Basin program in North Dakota. (88 Stat. 1498)

EXPLANATORY NOTES

Not Codified. Title XIII of this act is not codified in the U.S. Code.

Cross Reference, Authorization of Studies Required. Section 8 of the Federal Water Project Recreation Act (Public Law 89-72, 79 Stat. 213) requires specific authorization by law for the preparation of any feasibility report for a water resource project under Reclamation law. The section appears in Volume III at page 1826.

TITLE XIV

ELEPHANT BUTTE RECREATION POOL, NEW MEXICO

Sec. 1401. [Release of water from Heron Reservoir to Elephant Butte Reservoir—Limitations and conditions—Allocation of costs.]—(a) Pending the negotiation of contracts and completion of construction for furnishing water supplies for tributary irrigation units as authorized by section 8 of the Act of Congress dated June 13, 1962 (Public Law 87-183; 76 Stat. 96), and subject to the availability of stored water in Heron Reservoir in excess of one hundred thousand acre-feet, which water is not required for existing authorized uses, the Secretary of the Interior is authorized to permit releases from the Heron Reservoir of the San Juan-Chama project to provide storage and establish a minimum recreation pool in Elephant Butte Reservoir. Such releases, to the extent of the available supply, shall be limited to providing fifty thousand acre-feet for the initial recreation pool and up to six thousand acre-feet of water delivered to Elephant Butte Reservoir annually, for a period not exceeding ten years from establishment of the recreation pool, to replace loss by evaporation and other causes. Authorized releases, as provided above, are subject to and subordinated to any obligations under contracts for San Juan-Chama project water now or hereafter in force and for filling and maintaining a pool in Cochiti Reservoir under the Act of Congress dated March 26, 1964 (Public Law 88-293; 78 Stat. 171). The provisions of section 11(a) of the Act of June 13, 1962 (76 Stat. 96), requiring a contract satisfactory to the Secretary for the use of any water of the San Juan River are hereby expressly waived with respect to the use of water required to establish and maintain a permanent pool in Elephant Butte Reservoir: *Provided, however,* That nothing in this Act shall be construed to diminish, abridge, or impair any water rights of the Jicarilla, Southern Ute, Navajo and Ute Mountain Indians. Releases, as authorized by this title, shall be discontinued or reduced upon a finding by a court of competent jurisdiction that such releases are detrimental to such Indian water rights.

(b) The releases of water from Heron Reservoir authorized herein shall not be permitted unless and until the Rio Grande Compact Commission agrees by resolution that—

(1) the term "usable water" as defined in article I of the Rio Grande Compact shall not include San Juan-Chama project water stored in Elephant Butte Reservoir;

(2) in the determination of "actual spill" as that term is defined in article I of the Rio Grande Compact, neither the spill of "credit water", as that term is defined in article I of the Rio Grande Compact, shall not occur until all San Juan-Chama project water stored in Elephant Butte Reservoir shall have been spilled; and

(3) the amount of evaporation loss chargeable to San Juan-Chama project water stored in Elephant Butte Reservoir shall be that increment of the evaporation loss from the storage of San Juan-Chama project water; the evaporation loss from the reservoir shall be taken as the difference

between the gross evaporation from the water surface of Elephant Butte Reservoir and the rainfall on the same surface.

(c) Fifty per centum of any incremental costs incurred by the Secretary in the implementation of this title shall be borne by a non-Federal entity pursuant to arrangements satisfactory to the Secretary. (88 Stat. 1498)

EXPLANATORY NOTE

References in the Text. Section 8 of the Act of June 13, 1962 (76 Stat. 96), referred to in section 1401(a) of the text, authorized the construction of the San Juan-Chama project (initial stage). Section 8 appears in Volume III at page 1660. Section 11(a) of the 1962 Act, also referred to in section 1401(a) of the text, appears in Volume III at page 1663. The Act of March 26, 1964 (78 Stat. 171), also referred to in section 1401(a) of the text, authorized the Secretary of the Interior to make water available from the San Juan-Chama project for a permanent pool for fish and wildlife and recreation purposes at Cochiti Reservoir. The 1964 Act appears in Volume III at page 1744.

NOTE OF OPINION

1. Storage at Elephant Butte Reservoir

The fact that the Act of March 26, 1964 authorized permanent storage at Cochiti Reservoir of 50,000 acre feet of San Juan-Chama water, plus annual additions sufficient to offset evaporation, for recreation, fish and wildlife purposes, combined with the fact that section 1401 of the Reclamation Development Act of 1974 authorizes the release of water from Heron Reservoir to provide up to 50,000 acre feet, plus evaporation loss annually to Elephant Butte Reservoir for a recreation pool, does not demonstrate that storage at Elephant Butte is prohibited absent express Congressional authorization. Storage at Elephant Butte for purposes which are Congressionally authorized and which constitute beneficial uses under State law would not violate the provisions of the Colorado River Storage Project Act and the Act of June 13, 1962. Rather, the Act of March 26, 1964 and section 1401 of the Reclamation Development Act were passed in order to provide authorization because water was to be released without a contract as required by section 11 of the Act of June 13, 1962 and to be used solely for recreational purposes. It cannot be inferred from these statutes that water received by contract purchasers is not to be stored at Elephant Butte for municipal, industrial or irrigation purposes. *Jicarilla Apache Tribe v. United States*, 657 F.2d 1126 (10th Cir. 1981).

Sec. 1402. [Previous appropriations unchanged.]—Nothing contained in this title shall be construed to increase the amount of money heretofore authorized to be appropriated for construction of the Colorado River storage project, any of its units, or of the Rio Grande project. (88 Stat. 1499)

Sec. 1403. [Rio Grande Compact obligations unchanged.]—Nothing herein shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Rio Grande compact. (88 Stat. 1499)

EXPLANATORY NOTES

Not Codified. Title XIV of this Act is not codified in the U.S. Code.

Legislative History. H.R. 15736, Public Law 93-493 in the 93rd Congress. Reported in House from Interior and Insular Affairs July 18, 1974; H.R. Rept. No. 93-1206. Passed House August 2, 1974. Reported in Senate from Interior and Insular Affairs October 2, 1974; S. Rept. No. 93-1208. Passed Senate, amended, October 11, 1974. House agrees to Senate amendments October 15, 1974.

TRANSFER LANDS, ARAPAHO NATIONAL FOREST

An act to authorize the Secretary of the Interior to transfer certain lands in the State of Colorado to the Secretary of Agriculture for inclusion in the boundaries of the Arapaho National Forest, Colorado. (Act of December 31, 1974, Public Law 93-575, 88 Stat. 1878)

[Transfer of certain lands.]—To insure consolidation of lands in the Arapaho National Forest, Colorado, and to afford the opportunity for better management of those lands, the Secretary of the Interior is hereby authorized to transfer certain lands under his jurisdiction and adjacent to the existing boundary of said national forest to the Secretary of Agriculture. Pursuant to this Act, the exterior boundaries of the Arapaho National Forest, Colorado, shall be extended to include all of the lands not presently within such boundaries lying in township 3 south, range 78 west, township 4 south, range 78 west, township 2 south, range 79 west, township 3 south, range 79 west, and township 2 south, range 80 west, sections 7 through 18, and sections 20 through 28, all of the sixth principal meridian. (88 Stat. 1878; 16 U.S.C. § 485nt)

Explanatory Notes

Background. The area included within the extended boundaries of the Arapaho National Forest is known as the Blue River Corridor and totals approximately 46,000 acres. Of this, approximately 3,695 acres comprising the Green Mountain Reservoir and adjoining lands are currently under lease by the Bureau of Reclamation to the State of Colorado for recreation management. The Green Mountain Reservoir is a feature of the Colorado-Big Thompson project.

Legislative History. S. 3615, Public Law 93-575 in the 93d Congress. Reported in Senate from Interior and Insular Affairs August 19, 1974; S. Rept. No. 93-1105. Passed Senate August 21, 1974. Reported in House from Interior and Insular Affairs December 13, 1974; H.R. Rept. No. 93-1596. Passed House December 17, 1974.

CONVEY LAND, YUMA COUNTY

An act to relinquish and disclaim any title to certain lands and to authorize the Secretary of the Interior to convey certain lands situated in Yuma County, Arizona. (Act of December 31, 1974, Public Law 93-578, 88 Stat. 1895)

[Sec.1. Disclaiming of right, title, or interest—Legal description of land—Exceptions.]—The United States hereby disclaims any right, title, or interest in or to certain real property situated in Yuma County, Arizona, within the boundaries of the east half of the northwest quarter and the north half of the northeast quarter and the northwest quarter of the northwest quarter of section 13; and the northeast quarter of the southwest quarter and the south half of the southwest quarter of section 12, township 9 south, range 21 east, San Bernardino meridian as depicted by the original plat of survey of such township published by the United States Surveyor General's Office, dated March 21, 1857, being a portion of sections 23, 25, and 26, township 1 north, range 24 west, Gila and Salt River meridian as depicted by the dependent resurvey and accretion survey plat of said township published by the United States Department of the Interior, Bureau of Land Management, dated June 5, 1962, except that the provisions of this section shall not apply to the 52-acre portion of such property that was condemned by the United States pursuant to the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ. 5188-Phx) and any portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona. (88 Stat. 1895)

Sec. 2. [Wide River Farms, Inc.—Conveyance—Exceptions.]—The Secretary of the Interior is authorized and directed to convey by patent to Wide River Farms, Incorporated, an Arizona corporation, 52 acres of land, more or less, described as the southwest quarter of the northwest quarter and the southwest quarter of the northeast quarter of section 13, township 9 south, range 21 east, San Bernardino meridian as depicted by the original plat of survey of such township published by the United States Surveyor General's Office, date March 21, 1857, being a portion of section 26, township 1 north, range 24 west, Gila and Salt River meridian, as depicted by the dependent resurvey and accretion survey plat of said township published by the United States Department of the Interior, Bureau of Land Management, dated June 5, 1962, except that the provisions of this section shall not apply to any portion of such property that was described in the complaint in condemnation filed by the United States on June 30, 1964, in the United States District Court for the District of Arizona (No. Civ., 5188–Phx.) and any portion of such property submerged in the bed of the Colorado River and owned by the States of California and Arizona. (88 Stat. 1895)

Sec. 3. [Authority of Secretary.]—The Secretary of the Interior is authorized and directed to prepare and execute without consideration such instruments as may be appropriate to carry out the purposes of this Act. (88 Stat. 1896)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3574, Public Law 93-578 in the 93d Congress. Reported in Senate from Interior and Insular Affairs; S. Rept. No. 93-1274. Passed Senate November 20, 1974. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 93-1595. Passed House December 17, 1974.

HENSLEY LAKE

An act designating the lake created by the Hidden Reservoir project, Fresno River, California, as "Hensley Lake". (Act of January 2, 1975, Public Law 93-603, 88 Stat. 1959)

[Hensley Lake, Calif.—Designation.]—The lake created by the Hidden Reservoir project, Fresno River, California, authorized by the Flood Control Act of 1962, shall hereafter be known as Hensley Lake, and any law, regulation, document, or record of the United States in which such lake is designated or referred to shall be held to refer to such lake under and by the name of "Hensley Lake". (88 Stat. 1959)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The provision of the Flood Control Act of 1962 (76 Stat. 1173), referred to in the text, appears in Volume III at page 1702.

Legislative History. H.R. 12044, Public Law 93-603 in the 93d Congress. Reported in House from Public Works November 19, 1974; H.R. Rept. No. 93-1479. Passed House December 3, 1974. Reported in Senate from Public Works December 20,1974; S. Rept. No. 93-1425. Passed Senate December 20, 1974.

DISCONTINUE CERTAIN REPORTING REQUIREMENTS

[Extracts from] An act to discontinue or modify certain reporting requirements of law. (Act of January 2, 1975, Public Law 93-608, 88 Stat. 1967)

[Sec. 1. Repeal certain provisions.]—Certain provisions of law, which relate to the submission of reports to Congress or other Government authorities, are repealed as follows:

REPORTS UNDER MORE THAN ONE AGENCY

* * * * *

(2) [Santa Margarita Project Act—Repeal of section 7.]—Section 7 of the Act entitled "An Act to authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes", approved July 28, 1954 (68 Stat. 578), is repealed, thereby eliminating the report from time to time to the Congress, by the Attorney General, the Secretary of the Interior, and the Secretary of the Navy, concerning the conditions specified in section 1 of such Act involving facilities to provide water for irrigation and other uses from the Santa Margarita River, California. (88 Stat. 1967)

EXPLANATORY NOTE

Reference in the Text. Section 7 of the Act of July 28, 1954 (68 Stat. 578), referred to in and repealed by the text, appears in Volume II at page 1161.

* * * * *

REPORTS UNDER THE DEPARTMENT OF THE INTERIOR

(18) [Reclamation Project Act of 1939—Amend section 8.]—Section 8 of the Reclamation Project Act of 1939 (53 Stat. 1193; 43 U.S.C. §485g) is amended by striking out subsection (f) and redesignating subsections (g), (h), and (i) as subsections (f), (g), and (h), respectively, thereby eliminating the report to Congress by the Secretary, from time to time, on classifications and reclassifications of reclamation project lands. (88 Stat. 1970; 43 U.S.C. § 485g)

EXPLANATORY NOTES

Reference in the Text. Section 8 of the Reclamation Project Act of 1939 (53 Stat. 1193; 43 U.S.C. §485g), referred to in and amended by the text, appears in Volume I at pages 642-3.

Editor's Note, Annotations. Annotations of opinions interpreting section 8 are found in Volume I at page 643 and in Supplement I under "August 4, 1939—Reclamation Project Act of 1939."

(19) [Boulder City Act of 1958—Amend Section 9(e).]—Section 9(e) of the Boulder City Act of 1958 (72 Stat. 1734) is amended by striking out "and shall report his findings and recommendations to the Congress as soon thereafter as practicable," and inserting in lieu thereof a period, thereby eliminating the report to the Congress by the Secretary, at the end of each five-year period after incorporation of Boulder City concerning the need for assistance to the municipality for its water supply. (88 Stat. 1970)

EXPLANATORY NOTE

Reference in the Text. Section 9(e) of the Boulder City Act of 1958 (72 Stat. 1734), referred to in and amended by the text, appears in Volume II at page 1481.

* * * * *

EXPLANATORY NOTES

Not Codified. Sections 1(2) and 1(19) of this Act are not codified in the U.S. Code.

Legislative History. H.R. 14718, Public Law 93-608 in the 93rd Congress. Reported in the House from Government Operations July 24, 1974; H.R. Rept. No. 93-1214. Passed House August 5, 1974. Reported in Senate from Government Operations December 11, 1974; S. Rept. No. 93-1332. Passed Senate, amended, December 12, 1974. House agrees to Senate amendments December 18, 1974.

GRAND CANYON NATIONAL PARK ENLARGEMENT ACT

[Extracts from] An act to further protect the outstanding scenic, natural, and scientific values of the Grand Canyon by enlarging the Grand Canyon National Park in the State of Arizona, and for other purposes. (Act of January 3, 1975, Public Law 93-620, 88 Stat. 2089)

SHORT TITLE

Sec. 1. This Act may be cited as the "Grand Canyon National Park Enlargement Act". (88 Stat. 2089; 16 U.S.C. §228a note)

DECLARATION OF POLICY

Sec. 2. It is the object of this Act to provide for the recognition by Congress that the entire Grand Canyon, from the mouth of the Paria River to the Grand Wash Cliffs, including tributary side canyons and surrounding plateaus, is a natural feature of national and international significance. Congress therefore recognizes the need for, and in this Act provides for, the further protection and interpretation of the Grand Canyon in accordance with its true significance. (88 Stat. 2089; 16 U.S.C. §228a)

* * * * *

PRESERVATION OF EXISTING RECLAMATION PROVISIONS

Sec. 9. (a) Nothing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of sections 601 to 606 of the Colorado River Basin Project Act, approved September 30, 1968 (82 Stat. 885, 901). (88 Stat. 2091; 16 U.S.C. §228h)

(b) Section 7 of the Act of February 26, 1919 (40 Stat. 1175,1178), is amended to read as follows:

"Whenever consistent with the primary purposes of such park, the Secretary of the Interior is authorized to permit the utilization of those areas formerly within the Lake Mead National Recreation Area immediately prior to enactment of the Grand Canyon National Park Enlargement Act, and added to the park by such Act, which may be necessary for the development and maintenance of a Government reclamation project." (88 Stat. 2091; 16 U.S.C. §227)

* * * * *

EXPLANATORY NOTES

Reference in the Text. Sections 601 to 606 of the Colorado River Basin Project Act of September 30, 1968, (43 U.S.C. §§ 1551-1556), referred to in section 9(a) of the text, appear in Volume IV in chronological order.

Reference in the Text. The Act of February 26, 1919 (40 Stat. 1175), referred to in and amended by section 9(b) of the text, es-

tablished the Grand Canyon National Park. Section 7 of the Act appears in Volume I at page 244.

Legislative History. S. 1296, Public Law 93-620 in the 93d Congress. Reported in Senate from Interior and Insular Affairs September 21, 1973; S. Rept. No. 93-406. Passed Senate September 24, 1973. Reported in House from Interior and Insular Affairs September 25, 1974; H.R. Rept. No. 93-1374. Passed House, amended, October 10, 1974. Senate asks for a conference December 3, 1974. House agrees to a conference December 10, 1974. Conference report filed December 17, 1974; H.R. Rept. No. 93-1611. House agrees to conference report December 18, 1974. Senate agrees to conference report December 18, 1974.

TOM STEED RESERVOIR

An act to designate the Mountain Park Reservoir, Oklahoma, as the Tom Steed Reservoir. (Act of August 9, 1975, Public Law 94-77, 89 Stat. 410)

[Tom Steed Reservoir, Okla.—Designation.]—The Mountain Park Reservoir, Oklahoma, authorized to be constructed by the Act of September 21, 1968 (82 Stat. 853), shall be known and designated hereafter as the Tom Steed Reservoir. Any law, regulation, map, document, record, or other paper of the United States in which such reservoir is referred shall be held to refer to such reservoir as the Tom Steed Reservoir. (89 Stat. 410; 43 U.S.C. § 616aaaa note)

EXPLANATORY NOTES

Reference in the Text. The Act of September 21, 1968 (82 Stat. 853), referred to in the text, appears herein in chronological order.

Legislative History. S. 1531, Public Law 94-77 in the 94th Congress. Reported in Senate from Interior and Insular Affairs July 31, 1975; S. Rept. No. 94-351. Passed Senate August 1, 1975. Passed House August 1, 1975.

AMEND REHABILITATION AND BETTERMENT ACT

An act to expand coverage of the Rehabilitation and Betterment Act (Act of October 7, 1949, 63 Stat. 724). (Act of October 3, 1975, Public Law 94-102, 89 Stat. 485)

[Sec.1.—Rehabilitation and betterment loans—Conditions of repayment.]—The first sentence of the Act entitled "An Act to provide for the return of rehabilitation betterment costs of Federal reclamation projects", approved October 7, 1949, is amended to read as follows: "Expenditures of funds hereafter specifically appropriated for rehabilitation and betterment of any project constructed under authority of the Small Reclamation Projects Act (Act of August 6, 1956, 70 Stat. 1044, and Acts amendatory thereof and supplementary thereto) and of irrigation systems on projects governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), shall be made only after the organizations concerned shall have obligated themselves for the return thereof, in installments fixed in accordance with their ability to pay, as determined by the Secretary of the Interior in the light of their outstanding repayment obligations, and which shall, to the fullest practicable extent, be scheduled for return with their construction charge installments or otherwise scheduled as he shall determine: *Provided,* That repayment of such loans made for small reclamation projects shall include interest in accordance with the provisions of said Small Reclamation Projects Act.". (89 Stat. 485; 43 U.S.C. § 504)

Explanatory Notes

Reference in the Text. The Rehabilitation and Betterment Act (63 Stat. 724), referred to in and amended by the text, appears in Volume II at page 969. The Small Reclamation Projects Act (70 Stat. 1044), also referred to in the text, appears in Volume II at page 1331.

Editor's Note, Annotations. Annotations of opinions are found in Volume II at page 969 and in Supplement I under "October 7, 1949—Rehabilitation And Betterment Act."

Legislative History. H.R. 543, Public Law 94-102 in the 94th Congress. Reported in House from Interior and Insular Affairs March 20, 1975; H.R. Rept. No. 94-102. Passed House April 8, 1975. Reported in Senate from Interior and Insular Affairs September 19, 1975; S. Rept. No. 94-380. Passed Senate September 22, 1975.

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in feasibility investigations of certain potential water resource developments. (Act of December 16, 1975, Public Law 94-156, 89 Stat. 825)

[Sec.1—Feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following potential water resource developments:

(a) Power intertie potentials for the purpose of improving electric power transmission systems affecting the seventeen Western States.

(b) Boulder Canyon project modification, located at the existing Hoover Dam, at the Arizona-Nevada boundary on the Colorado River, in Mohave County, Arizona, and Clark County, Nevada.

(c) Minidoka project, Minidoka powerplant rehabilitation and enlargement, located at the existing Minidoka Dam, powerplant, and reservoir on the Snake River in Minidoka, Cassia, and Blaine Counties, Idaho.

(d) the Mora River Basin in Mora County, New Mexico.

(e) Yakima project, Yakima Indian Reservation near the Yakima River in Yakima and Klickitat Counties, Washington.

(f) Columbia Northside project, White Salmon Division, located along the White Salmon River in Klickitat and Skamania Counties, Washington.

(g) Seward project, Logan and Oklahoma Counties, Oklahoma.

(h) Frenchman-Cambridge division, Pick-Sloan Missouri Basin program, Chase, Hitchcock, Hayes, Frontier, Red Willow, Furnas, and Harlan Counties, Nebraska.

(i) Upper Canadian River Basin, Colfax County, New Mexico.

(j) Versippi Unit, Heart Division, Pick-Sloan Missouri Basin programs, Stark and Dunn Counties, North Dakota.

(k) Muddy Ridge area, Riverton unit, Pick-Sloan Missouri Basin program, Fremont County, Wyoming.

(l) A comprehensive resource analysis adequate to determine the feasibility of a geothermal energy utility system for the city of Susanville, California, and to initiate reconnaissance level studies of similar undertakings which may be requested by public entities in the future. (89 Stat. 825)

Explanatory Note

Legislative History. H.R. 6669, Public Law 94-156 in the 94th Congress. Reported in House from Interior and Insular Affairs September 15, 1975; H.R. Rept. No. 94-482. Passed House October 6, 1975. Reported in Senate from Interior and Insular Affairs November 26, 1975; S. Rept. No. 94-497. Passed Senate, amended, December 1, 1975. House agrees to Senate amendment December 3, 1975.

AMEND TOUCHET DIVISION, WALLA WALLA PROJECT ACT

An act to amend the Act of July 7, 1970 (84 Stat. 409) to authorize appropriations to the Secretary of the Interior without reference to the agencies involved. (Act of December 23, 1975, Public Law 94-175, 89 Stat. 1030)

[Sec.1—Touchet Division, Walla Walla project—Increased appropriation.]—Section 6 of the Act entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Touchet Division, Walla Walla project, Oregon-Washington, and for other purposes", approved July 7, 1970 (84 Stat. 409), is amended to read as follows:

"Sec. 6. There are authorized to be appropriated for construction of the works involved in the Touchet Division the sum of $22,774,000 (January 1969 prices), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes, and, in addition thereto, such sums as may be required to operate and maintain such division.". (89 Stat. 1030)

EXPLANATORY NOTES

Reference in the Text. Section 6 of the Act of July 7, 1970 (84 Stat. 409), referred to in and amended by the text, appears in Volume IV in chronological order.

Codification Omitted. The Act of July 7, 1970 (Public Law 91-307, 84 Stat. 409), authorizing the Touchet division, originally was codified to 43 U.S.C. §§616ttttyyyy but was omitted from the 1982 edition of the U.S. Code.

Legislative History. S. 1922, Public Law 94-175 in the 94th Congress. Reported in Senate from Interior and Insular Affairs October 8, 1975; S. Rept. No. 94-417. Passed Senate October 9, 1975. Reported in House from Interior and Insular Affairs December 8, 1975; H.R. Rept. No. 94-695. Passed House December 6, 1975.

PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ENERGY RESEARCH APPROPRIATION ACT, 1976

[Extracts from] An act making appropriations for public works for water and power development and energy research, including the Corps of Engineers—Civil, the Bureau of Reclamation, power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Nuclear Regulatory Commission, the Energy Research and Development Administration, and related independent agencies and commissions for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes. (Act of December 26, 1975, Public Law 94-180, 89 Stat. 1035)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Scoggins Valley Road.]—*Provided further,* That not to exceed $600,000 of the funds appropriated herein shall be made available for restoration of the Scoggins Valley Road from Oregon Highway No. 47 to Henry Hagg Lake (Scoggins Dam), which shall be nonreimbursable: (89 Stat. 1040)

* * * * *

[Savage Rapids Dam fishway facilities.]—*Provided further,* That funds appropriated herein for the repairs to the Savage Rapids Dam, of the Rogue River Basin Project, Grants Pass Division, may be transferred to the Oregon Fish and Game Commission on a reimbursable basis for such work on the south fishway facilities as determined desirable by the Secretary of the Interior. (89 Stat. 1040)

[Scoggins Valley Road.]—For "Construction and rehabilitation" for the period July 1, 1976, through September 30, 1976. * * **Provided further,* That not to exceed $1,400,000 of the funds appropriated herein shall be made available for restoration of the Scoggins Valley Road from Oregon Highway No. 47 to Henry Hagg Lake (Scoggins Dam), which shall be nonreimbursable. (89 Stat. 1040)

* * * * *

OPERATION AND MAINTENANCE

* * * * *

[Cocopah Indian Tribe.]—*Provided further,* That the amount appropriated herein includes $15,394.83 for Colorado River Front Work and Levee System due the Cocopah Indian Tribe because of a revision of the reservation boundary provided for in a decision of the Department of the Interior and a final judgment of the United States District Court. (89 Stat. 1041)

* * * * *

BONNEVILLE POWER ADMINISTRATION FUND

[Transmission facilities approved.]—Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are hereby specifically approved for construction of the following major transmission facilities: (a) transmission lines and related facilities to integrate generation into the main Bonneville Power Administration system from WPPSS No. 3 and No. 5 Nuclear Generating Plants near Satsop, Washington. (89 Stat. 1044)

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Development and Energy Research Appropriation Act, 1976." (89 Stat. 1048)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 8122, Public Law 94-180 in the 94th Congress. H.R. Rept. No. 94-319. S. Rept. No. 94-505. H.R. Rept. No. 94-711 (conference report).

AMEND SMALL RECLAMATION PROJECTS ACT

An act to amend the Small Reclamation Projects Act of 1956, as amended. (Act of December 27, 1975, Public Law 94-181, Stat. 1049)

[Sec.1—Small Reclamation Projects Act amendments.]—The Small Reclamation Projects Act of 1956 (70 Stat. 1044) as amended, is further amended as follows:

(a) Subsection 2(d) of the Act, as amended, is further amended to read as follows:

"(d) The term 'project' shall mean (i) any complete irrigation project, or (ii) any multiple-purpose water resource project that is authorized or is eligible for authorization under the Federal reclamation laws, or (iii) any distinct unit of a project described in clause (i) and (ii) or (iv) any project for the drainage of irrigated lands, without regard to whether such lands are irrigated with water supplies developed pursuant to the Federal reclamation laws, or (v) any project for the rehabilitation and betterment of a project or distinct unit described in clauses (i), (ii), (iii), and (iv): *Provided,* That the estimated total cost of the project described in clause (i), (ii), (iii), (iv), or (v) does not exceed the maximum allowable estimated total project cost as determined by subsection (f) hereof: *Provided further,* That a project described in clause (i), (ii), or (iii) may consist of existing facilities as distinct from newly constructed facilities, and funds made available pursuant to this Act may be utilized to acquire such facilities subject to a determination by the Secretary that such facilities meet standards of design and construction which he shall promulgate and that the cost of such existing facilities represent less than fifty per centum of the cost of the project. Nothing contained in this Act shall preclude the making of more than one loan or grant, or combined loan and grant, to an organization so long as no two such loans or grants, or combinations thereof, are for the same project, as herein defined.". (89 Stat. 1049; 43 U.S.C. § 422b)

(b) Section 2, as amended, is further amended by adding a new subsection (f) as follows:

"(f) The maximum allowable estimated total project cost of a proposal submitted during any given calendar year shall be determined by the Secretary using the Bureau of Reclamation composite construction cost index for January of that year with $15,000,000 as the January 1971 base.". (89 Stat. 1049; 43 U.S.C. § 422b)

(c) Section 4, as amended, is further amended by adding a new subsection (d) as follows:

"(d) At the time of his submitting the project proposal to the Congress, or at any subsequent time prior to completion of construction of the project, including projects heretofore approved, the Secretary may increase the amount of the requested loan and/or grant to an amount within the max-

imum allowed by subsection (a) of section 5 of the Act as herein amended, to compensate for increases in construction costs due to price escalation.". (89 Stat. 1049; 43 U.S.C. § 422d)

(d) Section 4, as amended, is further amended by changing subsection (d) to subsection (e) and by changing the reference in the last sentence of the renumbered subsection from (d) to (e). (89 Stat. 1050; 43 U.S.C. § 422d)

(e) Section 4, as amended, is further amended by changing subsection (e) to subsection (f). (89 Stat. 1050; 43 U.S.C. § 422d)

(f) Subsection 5(a), as amended, is further amended by deleting "$10,000,000 or" and inserting in lieu thereof the following: "two-thirds of the maximum allowable estimated total project cost as determined by subsection (f) of section 2, or". (89 Stat. 1050; 43 U.S.C. § 422e)

(g) Section 10, as amended, is further amended by deleting "$300,000,000" and inserting in lieu thereof the amount of "$400,000,000". (89 Stat. 1050; 43 U.S.C. § 422j)

EXPLANATORY NOTES

Reference in the Text. The Small Reclamation Projects Act (70 Stat. 1044), referred to in and amended by the text, appears in Volume II at page 1331.

Editor's Note, Annotations. Annotations of opinions are found in Volume II at pages 1332, 1336, and 1338, and in Supplement I under "August 6, 1956—Small Reclamation Projects Act."

Legislative History. H.R. 6874, Public Law 94-181 in the 94th Congress. Reported in House from Interior and Insular Affairs September 24, 1975; H.R. Rept. No. 94-505. Passed House October 6, 1975. Reported in Senate from Interior and Insular Affairs December 12, 1975; S. Rept. No. 94-544. Passed Senate December 16, 1975.

RECLAMATION AUTHORIZATION ACT OF 1975

An act to authorize and modify various Federal reclamation projects and programs, and for other purposes. (Act of March 11, 1976, Public Law 94–228, 90 Stat. 205)

[Sec. 1. Short title.]—This Act shall be known as the Reclamation Authorization Act of 1975.

TITLE I

POLECAT BENCH, WYOMING

Sec. 101. [Polecat Bench area, Shoshone extensions unit, Pick-Sloan Missouri Basin program reauthorized—Exchange of farm units.]—The Polecat Bench area of the Shoshone extensions unit, heretofore authorized as an integral part of the Pick-Sloan Missouri Basin program by the Act of December 22, 1944 (58 Stat. 887, 891), is hereby reauthorized as a part of that project. The construction, operation, and maintenance of the Polecat Bench area for the purposes of providing irrigation water for approximately nineteen thousand two hundred acres of land, municipal and industrial water supply, fish and wildlife conservation and development, public outdoor recreation, and other purposes shall be prosecuted by the Secretary of the Interior in accordance with the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal features of the Polecat Bench area shall include the Holden Reservoir, related canals, pumping plants, laterals, drains, and necessary facilities to effect the aforesaid purposes of the area. For a period of not more than two years after the initial availability of irrigation water up to two thousand two hundred and seventeen acres of public lands in the Polecat Bench area determined to be suitable for settlement purposes shall be made available, on a preference basis for exchange or amendment, to resident landowners on the Heart Mountain Division of the Shoshone project, who, on or before December 1, 1968, were determined by the Secretary to be eligible for such exchange or amendment of their farm units under provisions of the Act of August 13, 1953 (67 Stat. 566). (90 Stat. 205)

EXPLANATORY NOTE

References in the Text. The Act of December 22, 1944 (58 Stat. 887), referred to in the text, is the Flood Control Act of 1944. Section 9 of the 1944 Act (58 Stat. 891), which authorized the Pick-Sloan Missouri Basin program, appears in Volume II at page 806. The Act of August 13, 1953 (67 Stat. 566, 43 U.S.C. § 451 et seq.), permitting the exchange and amendment of farm units on Federal irrigation projects, also referred to in the text, appears in Volume II at page 1118.

Sec. 102. [Conservation and development of fish and wildlife—Recreation enhancement.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in con-

nection with the Polecat Bench area shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended. (90 Stat. 205)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (79 Stat. 213), referred to in the text, appears in Volume III at page 1820.

Sec. 103. [Integration with other works—Repayment contracts.]—The Polecat Bench area of the Shoshone extensions unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Repayment contracts for the return of construction costs allocated to irrigation will be based on the water users' ability to repay as determined by the Secretary of the Interior; and the terms of such contracts shall not exceed fifty years following the permissible development period. (90 Stat. 205)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), referred to in the text, appears in Volume II at page 806.

Sec. 104. [Class I equivalency authorized.]—The provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 649, 650), and any other similar provisions of Federal reclamation laws as applied to the Polecat Bench area of the Shoshone extensions unit are hereby modified to provide that lands held in a single ownership which may be eligible to receive water from, through, or by means of area works shall be limited to one hundred and sixty acres of class I land or the equivalent thereof in other land classes, as determined by the Secretary of the Interior. (90 Stat. 206)

EXPLANATORY NOTE

Reference in the Text. Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650, 43 U.S.C. § 423e), the Omnibus Adjustment Act, referred to in the text, appears in Volume I at page 376.

Sec. 105. [Surplus crops.]—For a period of ten years from the date of enactment of this title no water from the unit authorized by this title shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301 (b) (10) of the Agricultural Adjustment Act of 1938 (52 Stat. 31, 41), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (90 Stat. 206)

EXPLANATORY NOTE

References in the Text. The Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, referred to in the text, do not appear herein.

Sec. 106. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Polecat Bench area shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the Polecat Bench area is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from date of issue. (90 Stat. 206)

Sec. 107. [Appropriation authorized.]—There is hereby authorized to be appropriated for construction of the Polecat Bench area of the Shoshone extensions unit the sum of $46,000,000 (January 1975 price levels), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved and, in addition thereto, such sums as may be required for operation and maintenance of the works of said area. (90 Stat. 206)

EXPLANATORY NOTE

Codification Omitted. Title I of this Act originally was codified at 43 U.S.C. §§615kkkk to 615kkkk-6 but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

TITLE II

DICKINSON DAM, NORTH DAKOTA

Sec. 201. [Dickinson Dam modification.]—The Secretary of the Interior is authorized to modify the spillway of Dickinson Dam on the Heart River in the State of North Dakota, to increase conservation storage by installing gates on the existing spillway. The Secretary is also authorized to construct a new spillway to assure the safety of Dickinson Dam from floods currently estimated to be capable of occurrence. (90 Stat. 206)

Sec. 202. [Repayment of costs—Certain costs nonreimbursable.]—The Secretary is authorized to enter into an amendatory repayment contract with the city of Dickinson, North Dakota, to accomplish the repayment of that portion of the cost of the work authorized herein properly allocable to municipal and industrial water supplies in not to exceed forty years from completion of construction: *Provided.* That the total cost of the new spillway and related works incurred for the safety of the structure shall be nonreimbursable and nonreturnable. (90 Stat. 206)

Sec. 203. [Interest rate.]—The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the works authorized herein shall be determined by the Secretary of the Treasury, as of the

beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. (90 Stat. 207)

Sec. 204. [Appropriation authorized.]—There is hereby authorized to be appropriated for construction of works authorized by this title the sum of $4,000,000 (January 1975 price levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein. (90 Stat. 207)

EXPLANATORY NOTE

Not Codified. Title II of this Act is not codified in the U.S. Code.

TITLE III

MC KAY DAM AND RESERVOIR, OREGON

Sec. 301. [McKay Dam and Reservoir, Umatilla project, reauthorized.]—McKay Dam and Reservoir, Umatilla project, Oregon, is hereby reauthorized for the purposes of irrigation, flood control, fish and wildlife, recreation, and safety of dams, and the costs thereof shall be reallocated among these purposes by the Secretary of the Interior (hereinafter referred to as the "Secretary"), in a manner consistent with the provisions of this title. (90 Stat. 207)

Sec. 302. [Spillway modification authorized.]—The Secretary is authorized to perform modifications to the spillway structure at McKayDam as he determines to be reasonably required for safety of the dam from failure due to overtopping by potential flood inflows to the reservoir. (90 Stat. 207)

Sec. 303. [Storage capacity.]—Not to exceed six thousand acre-feet of storage capacity in McKay Reservoir shall be allocated for the primary purpose of retaining and regulating flood flows. (90 Stat. 207)

Sec. 304. [Cost allocation—Dam safety costs nonreimbursable.]—Costs incurred in the modification of McKay Dam to insure its safety from failure shall be nonreimbursable and nonreturnable. All other costs of McKay Dam and Reservoir, heretofore or hereinafter incurred, shall be allocated among the authorized purposes served by the dam and reservoir in accordance with standard cost allocation procedures, and the joint costs allocated to flood control, recreation, and fish and wildlife shall be nonreimbursable. (90 Stat. 207)

Sec. 305. [Amendatory repayment contracts.]—The Secretary is authorized to enter into amendatory repayment contracts with the Stanfield and Westland Irrigation Districts, or other water users, if appropriate, to secure the return of reimbursable irrigation construction and operation and maintenance costs arising from the modification and reallocation of McKay Dam and Reservoir. (90 Stat. 207)

Sec. 306. [Appropriation authorized.]—There is hereby authorized to be appropriated for modification of McKay Dam the sum of $1,300,000 (based on July 1975 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved, and, in addition thereto sums as may be required for operation and maintenance of McKay Dam and Reservoir. (90 Stat. 207)

EXPLANATORY NOTE

Codification Omitted. Title III of this Act originally was codified at 43 U.S.C. §§616ww to 616ww-5 but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

TITLE IV

POLLOCK-HERREID UNIT, SOUTH DAKOTA

Sec. 401. [Pollock-Herreid unit, South Dakota pumping division, Pick-Sloan Missouri Basin program, authorized.]—The Secretary of the Interior is hereby authorized to construct, operate, and maintain in accordance with the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) the Pollock-Herreid unit, South Dakota pumping division, Pick-Sloan Missouri Basin program, South Dakota, for the purposes of providing irrigation water service for approximately fifteen thousand acres of land, municipal and industrial water supply, and fish and wildlife conservation and development. The principal works of the project would include the main pumping plant located at Lake Oahe, the storage reservoir created by the existing Oahe Dam on the Missouri River, to lift water into Lake Pocasse, a subimpoundment on tributary Spring Creek, which would serve as a regulating reservoir; a system of main canals and laterals; relift pumping plants; drains; and the necessary facilities to effect the aforesaid purposes of the area. (90 Stat. 208)

Sec. 402. [Conservation and development of fish and wildlife.]—The conservation and development of the fish and wildlife resources in connection with the Pollock-Herreid unit shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213) as amended. (90 Stat. 208)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (79 Stat. 213), referred to in the text, appears in Volume III at page 1820.

Sec. 403. [Integration with other works.]—The Pollock-Herreid unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. (90 Stat. 208)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of 1944 (58 Stat. 887, 891), referred to in the text, appears in Volume II at page 806.

Sec. 404. [Surplus crops.]—For a period of ten years from the date of enactment of this title no water from the unit authorized by this title shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such a commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (52 Stat. 31, 41), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (90 Stat. 208)

EXPLANATORY NOTE

References in the Text. The Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, referred to in the text, do not appear herein.

Sec. 405. [Interest rate]—The interest rate used for computing interest during construction and interest on the unpaid balance of the interest bearing reimbursable costs of the unit shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the unit is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due or callable for fifteen years from date of issue. (90 Stat. 208)

Sec. 406. [Class 1 equivalency authorized.]—The provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 649, 650), and any other similar provisions of Federal reclamation laws as applied to the Pollock-Herreid unit, South Dakota pumping division, are hereby modified to provide that lands held in a single ownership which may be eligible to receive water from, through, or by means of unit works shall be limited to one hundred and sixty acres of Class I land or the equivalent thereof in other land classes, as determined by the Secretary of the Interior. (90 Stat. 208)

EXPLANATORY NOTE

Reference in the Text. Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650; 43 U.S.C. § 423e), the Omnibus Adjustment Act, referred to in the text, appears in Volume I at page 376.

Sec. 407. [Appropriation authorized.]—There is hereby authorized to be appropriated for construction of the Pollock-Herreid unit, as authorized in this title, the sum of $26,000,000 (January 1975 price levels), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums

as may be required for operation and maintenance of the works of said unit. (90 Stat. 209)

EXPLANATORY NOTES

Codification Omitted. Title IV of this Act originally was codified at 43 U.S.C. §§ 615*llll* to 615*llll*-6 but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

Legislative History. S. 151, Public Law 94–228 in the 94th Congress. Reported in Senate from Interior and Insular Affairs July 31, 1975; S. Rept. No. 94–350. Passed Senate August 1, 1975. Passed House, amended, January 20, 1976. Senate agrees to House amendments February 25, 1976. Companion bill H.R. 10537 reported in House from Interior and Insular Affairs December 8, 1975; H.R. Rept. No. 94–694.

PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ENERGY RESEARCH APPROPRIATION ACT, 1977

[Extracts from] An act making appropriations for public works for water and power development and energy research, including the Corps of Engineers—Civil, the Bureau of Reclamation, power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Nuclear Regulatory Commission, the Energy Research and Development Administration, and related independent agencies and commissions for the fiscal year ending September 30, 1977, and for other purposes. (Act of July 12, 1976, Public Law 94–355, 90 Stat. 889)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Teton River Dam claims.]—For an additional amount for "Construction and rehabilitation", to become available immediately upon enactment of this Act, to remain available until expended, $200,000,000: *Provided,* That this additional amount may be made available without reimbursement: *Provided further,* That this appropriation is for the payment of claims for damages to or loss of property, personal injury, or death proximately resulting from the failure on June 5, 1976, of the Teton River Dam, in accordance with such rules and regulations of the Secretary of the Interior as may be necessary and proper for the purpose of administering such claims and of determining the amounts to be allowed pursuant to this appropriation and the persons entitled to receive the same: *Provided further,* That nothing herein shall be construed to impose any liability on the United States or to allow for payment of claims that are paid or payable from any other source, public or private: *Provided further,* That of funds available to the Bureau of Reclamation pursuant to Public Law 94–180 under this appropriation title, not to exceed $300,000, to remain available until expended, may be transferred without reimbursement, with the approval of the Secretary of the Interior, to "Salaries and Expenses", Office of the Secretary, to provide for expenses related to investigations of the structure failure, the expenditure of which funds shall not be subject to the limitation on services as authorized by title 5, United States Code, section 3109, as contained in section 104 of Public Law 94–165. (90 Stat. 893)

EXPLANATORY NOTE

References in the Text. Public Law 94–180, referred to in the text, is the Public Works for Water and Power Development and Energy Research Appropriation Act, 1976. Public Law 94–165, also referred to in the text, is the Department of the Interior and Related Agencies Appropriation Act, 1976.

NOTE OF OPINION

1. Damages not compensable

The words "proximately resulting" in the Public Works Appropriations Act, 1977, and the words "directly resulting" in section 2 of the Teton Dam Disaster Assistance Act mean that remote damages are not compensable. Accordingly, a claim by Island Park Resorts, Inc., operator of Pond's Lodge, for $25,000 of income allegedly lost when a section of U.S. Highway 190–20 serving the resort was washed out by the flooding which followed the collapse of Teton Dam, 50 miles to the south, is denied. Continued access to the resort was provided by a dirt road detour. Damages caused by the fact that access to the resort was made more circuitous or that travel agencies advised potential customers to use routes that would bypass Island Park are too remote to be compensable. *Island Park Resorts, Inc.*, 83 I.D. 680 (1976).

BONNEVILLE POWER ADMINISTRATION FUND

[Transmission facilities approved.]—Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, are hereby specifically approved for * * * construction of the following major transmission facilities: facilities to provide system support to the Lost River-Salmon River area in southeast Idaho. (90 Stat. 896)

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Development and Energy Research Appropriation Act, 1977". (90 Stat. 900)

EXPLANATORY NOTES

Not Codified. The extracts from this Act reprinted 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. 14236, Public Law 94–355 in the 94th Congress. H.R. Rept. No. 94–1223. S. Rept. No. 94–960. H.R. Rept. No. 94–1297 (conference report).

TETON DAM DISASTER ASSISTANCE ACT

An act to authorize the Secretary of the Interior to make compensation for damages arising out of the failure of the Teton Dam a feature of the Teton Basin Federal reclamation project in Idaho, and for other purposes. (Act of September 7, 1976, Public Law 94–400, 90 Stat. 1211)

[Sec. 1. Purpose of act.]—The Congress finds that without regard to the proximate cause of the failure of the Teton Dam, it is the purpose of the United States to fully compensate any and all persons, for the losses sustained by reason of the failure of said dam. The purposes of this Act are (1) to provide just compensation for the deaths, personal injuries and losses of property, including the destruction and damage to irrigation works, resulting from the failure on June 5, 1976, of the Teton Dam in the State of Idaho, and (2) to provide for the expeditious consideration and settlement of claims for such deaths, personal injuries, and property losses. (90 Stat. 1211)

Sec. 2. [Claims for casualty or property losses.]—All persons who suffered death, personal injury, or loss of property directly resulting from the failure on June 5, 1976, of the Teton Dam of the Lower Teton Division of the Teton Basin Federal reclamation project which was authorized to be constructed by the Act of September 7, 1964 (78 Stat. 925) shall be entitled to receive from the United States full compensation for such death, personal injury, or loss of property. Claimants shall submit their claims in writing to the Secretary, under such regulations as he prescribes, within two years after the date on which the regulations required by section 5 are published in the Federal Register. Claims based on death shall be submitted only by duly authorized legal representatives. (90 Stat. 1211)

Explanatory Note

Reference in the Text. The Act of September 7, 1964 (78 Stat. 925), referred to in the text appears in Volume III at page 1796.

Notes of Opinions

Damages not compensable 1
Exhaustion of administrative remedies 2

1. Damages not compensable

The words "proximately resulting" in the Public Works Appropriations Act, 1977, and the words "directly resulting" in section 2 of the Teton Dam Disaster Assistance Act mean that remote damages are not compensable. Accordingly, a claim by Island Park Resorts, Inc., operator of Pond's Lodge, for $25,000 of income allegedly lost when a section of U.S. Highway 190–20 serving the resort was washed out by the flooding which followed the collapse of Teton Dam, 50 miles to the south, is denied. Continued access to the resort was provided by a dirt road detour. Damages caused by the fact that access to the resort was made more circuitous or that travel agencies advised potential customers to use routes that would bypass Island Park are too remote to be compensable. *Island Park Resorts, Inc.*, 83 I.D. 680 (1976).

2. Exhaustion of administrative remedies

Where the construction of the American Falls Dam on the Snake River was delayed because of the Teton Dam failure and the con-

tractor's claim for damages under the Teton Dam Disaster Assistance Act was administratively denied because plaintiff's area of operations fell outside the "major disaster areas" as defined by the regulations, plaintiff could not then bring a claim under the Federal Tort Claims Act without exhausting administrative remedies under that Act. Because of differences in the elements of proof required by the two Acts, plaintiff's filing under the Teton Dam Disaster Assistance Act failed to afford the Government the same opportunity to review and settle the claim as it would have had if plaintiff had administratively filed under the Federal Tort Claims Act. *Gordon H. Ball, Inc. v. United States*, 461 F. Supp. 311 (D. Nev. 1978).

Sec. 3. (a) [Settlement of claims—Limitations.]—The Secretary of the Interior, or his designee for the purpose, acting on behalf of the United States, is hereby authorized to and shall investigate, consider, ascertain, adjust, determine,and settle any claim for money damages asserted under section 2. Except as otherwise provided herein, the laws of the State of Idaho shall apply: *Provided,* That determinations, awards, and settlements under this Act shall be limited to actual or compensatory damages measured by the pecuniary injuries or loss involved and shall not include interest prior to settlement or punitive damages.

(b) [Awarded amount offset by insurance benefits.]—In determining the amount to be awarded under this Act the Secretary shall reduce any such amount by an amount equal to the total of insurance benefits (except life insurance benefits) or other payments or settlements of any nature previously paid with respect to such death claims, personal injury, or property loss.

(c) [Payments not subject to insurance subrogation.]—Payments approved by the Secretary under this Act on death, personal injury, and property loss claims, shall not be subject to insurance subrogation claims in any respect under this Act but without prejudice under other laws as provided in subsection (f).

(d) [No insurance fund reimbursement.]—The Secretary shall not include in an award any amount for reimbursement to any insurance fund for loss payments made by such company or fund.

(e) [Nontransferable claim.]—Except as to the United States, no claim cognizable under this Act shall be assigned or transferred.

(f) [Release of claims against United States.]—The acceptance by the claimant of any award, compromise, or settlement under this Act, except an advance or partial payment made under section 4(c), shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States by reason of the same subject mater. A release shall not, however, prevent an insurer with rights as a subrogee under its own name or that of the claimant from exercising any right of action against the United States to which it may be entitled under any other laws for payments made to the claimant for a loss arising from the subject matter.

(g) [Denial of claim by insurer.]—Any claim for damages which may be payable in whole or in part by a claimant's insurer, shall not be paid by the Secretary unless and until the claimant provides written proof that the

insurer has denied the claim or has failed to approve or deny such claim within six months of its presentment, and the claimant assigns to the United States his rights against the insurer with respect to such claim. Upon the acceptance of any payment or settlement under this Act, the claimant shall assign to the United States any rights of action he has or may have against any other third party, including an insurer. (90 Stat. 1211)

NOTES OF OPINIONS

Damages not compensable, Idaho Law 1
Exhaustion of administrative remedies 2
Immunity for flood control damages 3

1. Damages not compensable, Idaho law

Under Idaho law, which, unless otherwise provided, governs claims under section 3(a) of the Teton Dam Disaster Assistance Act, only damages which "were the natural and direct or proximate consequences of the wrongful act complained of" are compensable. In contrast, damages which "are such as are the result of accident or an unusual combination of circumstances which could not reasonably be anticipated and over which the party sought to be charged had no control," are remote damages and not compensable. *Island Park Resorts, Inc.*, 83 I.D. 680 (1976).

2. Exhaustion of administrative remedies

Where the construction of the American Falls Dam on the Snake River was delayed because of the Teton Dam failure and the contractor's claim for damages under the Teton Dam Disaster Assistance Act was administratively denied because plaintiff's area of operations fell outside the "major disaster areas" as defined by the regulations, plaintiff could not then bring a claim under the Federal Tort Claims Act without exhausting administrative remedies under that Act. Because of differences in the elements of proof required by the two Acts, plaintiff's filing under the Teton Dam Disaster Assistance Act failed to afford the Government the same opportunity to review and settle the claim as it would have if plaintiff had administratively filed under the Federal Tort Claims Act. *Gordon H. Ball, Inc. V. United States*, 461 F. Supp. 311 (D. Nev. 1978).

3. Immunity for flood control damages

Although section 3(f) of the Teton Dam Disaster Assistance Act of 1976 permits an insurer to exercise "any right of action against the United States to which it may be entitled under any laws for payments made to [insureds] . . .", an action by insurance companies under the Federal Tort Claims Act to recover more than $7,000,000 in claims paid to insureds because of the Teton Dam collapse is barred by 33 U.S.C. § 702c which maintains the absolute defense of sovereign immunity for flood damages related to flood control projects. Although flood control is not an express purpose of the Teton Basin Project, it is clear from the legislative history that the project was actually entended, at least in part, to control flooding. Also the Teton Dam Disaster was a "flood" within the meaning of § 702c. *Aetna Insurance Co. v. United States*, 628 F.2d 1201 (9th Cir. 1980), *cert. denied*, 450 U.S. 1025 (1981).

Sec. 4. (a) [Determination of claims.]—In the determination and settlement of claims asserted under this Act, the Secretary shall limit himself to the determination of—

(1) whether the losses sustained directly resulted from the failure of the Teton Dam on June 5, 1976;

(2) the amounts to be allowed and paid pursuant to this Act; and

(3) the persons entitled to receive the same.

(b) [Time limit.]—The Secretary shall determine and fix the amount of awards, if any, in each claim within twelve months from the date on which the claim was submitted.

(c) [Advance or partial payments.]—At the request of a claimant, the Secretary is authorized to make advance or partial payments prior to final

settlement of a claim, including final settlement on any portion or aspect of a claim determined to be logically severable. Such advance or partial payments shall be made available under regulations promulgated by the Secretary under section 5, which regulations shall include, but not be limited to, provisions for such payments where the Secretary determines that to delay payment until final settlement of the claim would impose a substantial hardship on such claimant. When a claimant pursues a remedy as provided for in section 9 of this Act, he shall be permitted to retain such advance or partial payments under a final court decision on the merits.

(d) [Compensation for investments made in anticipation of water supply.]—Payments may be made for compensation for direct investments made in on-farm structural facilities in anticipation of service from the Teton Reservoir to the extent that such facilities are unuseable or are diminished in value by the denial of such service. (90 Stat. 1212)

Sec. 5. [Rules and regulations.]—Notwithstanding any other provision of law, the Secretary shall within fifteen days after the enactment of this Act promulgate and publish in the Federal Register, final regulations and procedures for the handling of the claims authorized in section 2 of this Act. The Secretary shall also cause to be published, in newspapers with general circulation in the State of Idaho, an explanation of the rights conferred by this Act and the procedural and other requirements imposed by the rules of procedure promulgated by him. Such explanation shall be in clear, concise, and easily understandable language. In addition, the Secretary shall also disseminate such explanation concerning such rights and procedures, and other data helpful to claimants, in the State of Idaho, by means of brochures, pamphlets, radio, television, and other media likely to reach prospective claimants. (90 Stat. 1212)

Sec. 6. [Coordination with other disaster relief operations.]—The claims program established by this Act shall, to the extent practicable, be coordinated with other disaster relief operations conducted by other Federal agencies under the Disaster Relief Act of 1974 (42 U.S.C 5121) and other provisions of law. The Secretary shall consult with the heads of such other Federal agencies, and shall, as he deems necessary, consistent with the expeditious determination of claims hereunder, make use of information developed by such agencies. The heads of all other Federal agencies performing disaster relief functions under the Disaster Relief Act of 1974 and other Federal authorities are hereby authorized and directed to provide the Secretary, or his designee shall deem necessary for the administration of this Act. (90 Stat. 1213)

Sec. 7. [Repair of damaged irrigation facilities.]—In order to expedite the repair and restoration of irrigation facilities damaged as a direct result of the failure of the Teton Dam, the Secretary is authorized and directed to enter into agreements with the owners of such facilities to finance the repair or reconstruction thereof, to the standards and conditions existing immediately prior to the failure of Teton Dam, either by direct payment or through construction contracts administered by the Bureau of Reclamation to the extent the cost of repairs or construction are not covered by

insurance. The cost of such repairs or reconstruction shall be nonreimbursable. (90 State. 1213)

Sec. 8. [Annual report to Congress.]—At the end of the year following approval of this Act and each year thereafter until the completion of the claims program, the Secretary shall make an annual report to the Congress of all claims submitted to him under this Act stating the name of each claimant, the amount claimed, a brief description of the claim, and the status or disposition of the claim including the amount of each administrative payment and award under the Act. (90 Stat. 1213)

Sec. 9. [Actions against United States.]—An action shall not be instituted in any court of the United States upon a claim against the United States which is included in a claim submitted under this Act until the Secretary or his designee has made a final disposition of the pending claim. A pending claim may be withdrawn from consideration prior to final decision upon fifteen days written notice, and such withdrawal shall be deemed an abandonment of the claim for all purposes under this Act. After withdrawal of a claim or after the final decision of the Secretary or his designee on a claim under this Act, a claimant may elect to assert said claim or institute an action thereon against the United States in any court of competent jurisdiction under any other provision of applicable law, and upon such election there shall be no further consideration or proceedings on the claim under this Act.

(b) [Appeal of Secretary's decision—Election of remedy.]—Any claimant aggreived by a final decision of the Secretary under this Act may file within sixty days from the date of such decision with the United States District Court for the District of Idaho a petition praying that such decision be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The filing of such an appeal shall constitute an election of remedies. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(c) [Other remedies unaffected.]—Except to the extent otherwise herein provided, nothing in this Act shall be construed to prevent any claimant under this Act from exercising any rights to which he maybe entitled under any other provisions of law.

(d) [Limitation of fees.]—Attorney and agent fees shall be paid out of the awards hereunder. No attorney or agent on account of services rendered in connection with each claim shall receive in excess of 10 per centum of the amount paid in connection therewith, any contract to the contrary notwithstanding. Whoever violates this subsection shall be fined a sum not to exceed $10,000. (90Stat. 1213)

NOTES OF OPINION

1. Exhaustion of administrative remedies

The legislative history of the Teton Dam Disaster Assistance Act demonstrates that section 9(c) was intended to establish the independence of claims under the Act from those which might exist under any other provision of applicable law, and there is no evidence that this provision was designed to waive the filing

requirements of § 2675(a) of the Federal Tort Claims Act. Thus, a contractor who was denied recovery for construction delays occasioned by the Teton Dam failure under the Teton Dam Disaster Assistance Act could not pursue those claims in the courts under the Federal Tort Claims Act until he had exhausted his administrative remedies as required by § 2675(a) of the latter Act. *Gordon H. Ball, Inc v. United States*, 461 F. Supp. 311 (D. Nev. 1978).

Where the construction of the American Falls Dam on the Snake River was delayed because of the Teton Dam failure and the contractor's claim for damages under the Teton Dam Disaster Assistance Act was administratively denied because plaintiff's area of operations fell outside the "major disaster areas" as defined by the regulations, plaintiff could not then bring a claim under the Federal Tort Claims Act without exhausting administrative remedies under § 2675(a) of the Act. Because of differences in the elements of proof required by the two Acts, plaintiffs filing under the Teton Dam Disaster Assistance Act failed to afford the Government the same opportunity to review and settle the claim as it would have if plaintiff had administratively filed under the Federal Tort Claims Act. *Gordon H. Ball, Inc. v. United States*, 461 F. Supp. 311 (D. Nev. 1978).

Sec. 10. [Definition.]—For the purposes of this Act, the term "persons" means any individual, Indian, Indian tribe, corporation, partnership, company, municipality, township, association or other non-Federal entity. (90 Stat. 1214)

Sec. 11. [Severability.]—If any particular provision of this Act or the application thereof to any person or circumstance, is held invalid, the other provisions of this Act shall not be affected thereby. (90 Stat. 1214)

Sec. 12. [Appropriation authorized.]—There are hereby authorized to be appropriated such funds as may be required to carry out the purposes of this Act. (90 Stat. 1214)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3542, Public Law 94-400 in the 94th Congress. Passed Senate June 17, 1976. Reported in Senate from Interior and Insular Affairs June 21, 1976; S. Rept. No. 94-963. Reported in House from Judiciary August 10, 1976; H.R. Rept. No. 94-1423. Passed House, amended, August 24, 1976. Senate agrees to House amendments August 25, 1976.

REPAIR OF DEL CITY AQUEDUCT

An act to provide for repair of the Del City aqueduct, a feature of the Norman Federal reclamation project, Oklahoma. (Act of September 17, 1976, Public Law 94–415, 90 Stat. 1274)

[Repair of Del City aqueduct—Amendment of repayment contract.]—The Secretary of the Interior is hereby authorized to enter into an amendatory contract with the Central Oklahoma Master Conservancy District, organized under the laws of the State of Oklahoma, providing for an adjustment of the payment obligations of the Central Oklahoma Conservancy District under the contract of September 5, 1961, between said district and the United States pursuant to an Act of June 27, 1960 (74 Stat. 225); said adjustment of repayment obligations to be equal to the costs incurred by said district to repair the Del City aqueduct, which, in the opinion of the Secretary of Interior, are in excess of the costs of normal operation, maintenance, and replacement: *Provided,* That any such costs shall be credited so as to reduce the repayment obligation of said district annually at the end of the year during which said costs are incurred. (90 Stat. 1274)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of June 27, 1960 (74 Stat. 225), referred to in the text, authorized construction of the Norman Project, Oklahoma. The Act appears in Volume III at page 1535.

Legislative History. H.R. 6622, Public Law 94–415 in the 94th Congress. Reported in House from Interior and Insular Affairs September 15, 1975; H.R. Rept. No. 94–481. Passed House October 6, 1975. Reported in Senate from Interior and Insular Affairs August 27, 1976; S. Rept. No. 94–1179. Passed Senate September 7, 1976.

RECLAMATION AUTHORIZATIONS ACT OF 1976

An act to authorize various Federal reclamation projects and programs, and for other purposes. (Act of September 28, 1976, Public Law 94–423, 90 Stat. 1324)

[Sec. 1. Short title.]—This Act shall be known as the Reclamation Authorizations Act of 1976.

TITLE I

KANOPOLIS UNIT, KANSAS

Sec. 101. [Kanopolis unit, Pick-Sloan Missouri Basin program, reauthorized.]—The Kanopolis unit, heretofore authorized as an integral part of the Pick-Sloan Missouri Basin program by the Act of December 22, 1944 (58 Stat. 887, 891), is hereby reauthorized as part of that project. The construction, operation, and maintenance of the Kanopolis unit for the purposes of providing irrigation water for approximately twenty thousand acres of land, municipal and industrial water supply, fish and wildlife conservation and development, environmental preservation, and other purposes shall be prosecuted by the Secretary of the Interior in collaboration with the Secretary of the Army acting through the Chief of Engineers, in accordance with the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal features of the Kanopolis unit shall include the modification of the existing Kanopolis Dam and Lake, an irrigation diversion structure, the Kanopolis north and south canals, laterals, drains, and necessary facilities to effect the aforesaid purposes of the unit. (90 Stat. 1324).

EXPLANATORY NOTE

Reference in the Text. The Act of December 22, 1944 (58 Stat. 887), referred to in the text, is the Flood Control Act of 1944. Section 9 of the 1944 Act authorized the Missouri River Basin Project, the name of which subsequently was changed to the Pick-Sloan Missouri Basin Program. Section 9 of the 1944 Act appears in Volume II at page 806.

Sec. 102. [Wildlife management agreement.]—Upon expiration of existing leases for agricultural use of publicly owned lands, in the Kanopolis Reservoir area, the Secretary of the Army is authorized to enter into a management agreement covering said lands with the Kansas Forestry, Fish and Game Commission. The Secretary of the Army is further authorized to include provisions in such operating agreements whereby revenues deriving from future use of said reservoir lands for agricultural purposes may be retained by the game commission to the extent that they are utilized for wildlife management purposes at Kanopolis Reservoir. (90 Stat. 1324)

Sec. 103. [Integration with other works—Terms of repayment contract—Cost allocation.]—The Kanopolis unit shall be integrated physically

and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Repayment contracts for the return of construction costs allocated to irrigation will be based on the irrigator's ability to repay as determined by the Secretary of the Interior, and the terms of such contract shall not exceed fifty years following the permissible development period. Repayment contracts for the return of costs allocated to municipal and industrial water supply shall be under the jurisdiction of the Secretary of the Army, and such contracts shall be prerequisite to the initiation of construction of facilities authorized by this title. Costs allocated to environmental preservation and fish and wildlife shall be nonreimbursable and nonreturnable under Federal reclamation law. (90 Stat. 1324)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Flood Control Act of 1944, referred to in the text, appears in Volume II at page 806.

Sec. 104. [Surplus crops.]—For a period of ten years from the date of enactment of this title, no water from the unit authorized by this title shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949 (63 Stat. 1051; 7 U.S.C. 1421), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (62 Stat. 1251), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (90 Stat. 1325)

EXPLANATORY NOTE

References in the Text. The Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, referred to in the text, do not appear herein.

Sec. 105. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Kanopolis unit shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the unit is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from date of issue. (90 Stat. 1325)

Sec. 106. [Class 1 equivalency authorized.]—The provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 649, 650), and any other similar provisions of Federal reclamation laws as applied to the Kanopolis unit, Pick-Sloan Missouri Basin program, are hereby modified to provide that lands held in a single ownership which may be eligible to receive water from, through, or by means of, unit works shall be limited

to one hundred and sixty acres of class I land or the equivalent thereof in other land classes, as determined by the Secretary of the Interior. (90 Stat. 1325)

EXPLANATORY NOTE

Reference in the Text. Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650), the Omnibus Adjustment Act, referred to in the text, appears in Volume I at page 376.

Sec. 107. [Appropriation authorized.]—There is hereby authorized to be appropriated for fiscal year 1978 and thereafter, for construction of the Kanopolis unit, the sum of $30,900,000 (January 1976 price levels) plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved. Of the funds authorized to be appropriated by this section, the Secretary of the Interior shall transfer to the Secretary of the Army all except those required for post-authorization planning, design, and construction of the single use irrigation facilities of the unit, and the Secretary of the Army shall utilize such transferred funds for implementation of all other aspects of the authorized unit. There are also authorized to be appropriated such sums as may be required for operation and maintenance of the works of said unit. (90 Stat. 1325)

TITLE II

OROVILLE-TONASKET UNIT, WASHINGTON

Sec. 201. [Oroville-Tonasket unit extension, Okanogan-Similkameen division, Chief Joseph Dam project, authorized—Removal of certain irrigation works—Reconveyance of lands.]—For purposes of supplying water to approximately ten thousand acres of land and for enhancement of the fish resource of the Similkameen, Okanogan, and Columbia Rivers and the Pacific Ocean, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to construct, operate, and maintain the Oroville-Tonasket unit extension, Okanogan-Similkameen division, Chief Joseph Dam project, Washington, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal works of the Oroville-Tonasket unit extension (hereinafter referred to as the project) shall consist of pumping plants, distribution systems; necessary works incidental to the rehabilitation or enlargement of portions of the existing irrigation system to be incorporated in the project; drainage works; and measures necessary to provide fish passage and propagation in the Similkameen River. Irrigation works constructed and rehabilitated by the United States under the Act of October 9, 1962 (76 Stat. 761) and which are not required as a part of the project shall be dismantled and removed with funds appropriated hereunder and title to the lands and right-of-way thereto which were conveyed to the United States shall be reconveyed to the Oroville-Tonasket Irrigation District. All other irrigation works which are a part of the Or-

oville-Tonasket Irrigation District's existing system and which are not required as a part of the project or that do not have potential as rearing areas for fish shall be dismantled and removed with funds appropriated hereunder. (90 Stat. 1325)

EXPLANATORY NOTE

Reference in the Text. The Act of October 9, 1962 (76 Stat. 761), referred to in the text, authorized construction of the Oroville-Tonasket unit. The 1962 Act appears in Volume III at page 1695.

Sec. 202. [Termination of existing contract—Terms of new contract.]—The Secretary is authorized to terminate the contract of December 26, 1964, between the United States and the Oroville-Tonasket Irrigation District and to execute new contracts for the payment of project costs, including the then unpaid obligation under the December 26, 1964, contract. Such contracts shall be entered into pursuant to section 9 of the Act of August 4, 1939 (53 Stat. 1187). The term of such contract shall be fifty years, exclusive of any development period authorized by law. The contracts for irrigation water may provide for the assessment of an account charge for each identifiable ownership receiving water from the project. Such charge, together with the acreage or acre-foot charge, shall not exceed the repayment capacity of commercial family-size farm enterprises as determined on the basis of studies by the Secretary. Project construction costs covered by contracts entered into pursuant to section 9(d) of the Act of August 4, 1939, as determined by the Secretary, and which are beyond the ability of the irrigators to repay shall be charged to and returned to the reclamation fund in accordance with the provisions of section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707). The aforesaid contract shall provide that irrigation costs properly assignable to privately owned recreational lands shall be repaid in full within fifty years with interest. (90 Stat. 1326)

EXPLANATORY NOTE

References in the Text. Section 9 of the Act of August 4, 1939 (53 Stat. 1187), the Reclamation Project Act of 1939, referred to in the text, appears in Volume I at page 643. Section 2 of the Act of June 14, 1966 (80 Stat. 200), which authorized construction of the Third Powerplant, Grand Coulee Dam, Columbia Basin Project, Washington, provides for financial assistance to Pacific Northwest reclamation projects from net revenues of Federal Columbia River power systems. Section 2 of the 1966 Act appears in Volume III at page 1870.

Sec. 203. [Power rates for irrigation pumping.]—Power and energy required for irrigation water pumping for the project, including existing irrigation works retained as a part of the project, shall be made available by the Secretary from the Federal Columbia River power system at the charges determined by him. (90 Stat. 1326)

Sec. 204. [Fish and wildlife benefits.]—The provision of lands, facilities, and any project modifications which furnish fish and wildlife benefits in connection with the project shall be in accordance with the Federal Water

Project Recreation Act (79 Stat. 213), as amended. All costs allocated to the anadromous fish species shall be nonreimbursable. (90 Stat. 1326)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (79 Stat. 213), referred to in the text, appears in Volume III at page 1820.

Sec. 205. [Surplus crops.]—For a period of ten years from the date of enactment of this title, no water from the project authorized by this title shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949 (63 Stat. 1051; 7 U.S.C. 1421), or any amendment thereof,if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938 (62 Stat. 1251; 7 U.S.C. 1301), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (90 Stat. 1326)

EXPLANATORY NOTE

References in the Text. The Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, referred to in the text, do not appear herein.

Sec. 206. [Interest rate.]—The interest rate used for purposes of computing interest during construction and, where appropriate, interest on the unpaid balance of the reimbursable obligations assumed by non-Federal entities shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption from fifteen years from the date of issue. (90 Stat. 1326)

Sec. 207. [Class 1 equivalency authorized.]—The provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 649, 650), and any other similar provisions of Federal reclamation laws as applied to the Oroville-Tonasket unit, are hereby modified to provide that lands held in a single ownership which may be eligible to receive water from, through, or by means of unit works shall be limited to one hundred and sixty acres of class I land or the equivalent thereof in other land classes as determined by the Secretary of the Interior. (90 Stat. 1327)

EXPLANATORY NOTE

Reference in the Text. Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650; 43 U.S.C. § 423e), the Omnibus Adjustment Act, referred to in the text, appears in Volume I at page 376.

Sec. 208. [Appropriation authorized.]—There is hereby authorized to be appropriated for construction of the works and measures authorized by this title for the fiscal year 1978 and thereafter the sum of $39,370,000

(January 1976 1976 prices), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project. (90 Stat. 1327)

TITLE III

UINTAH UNIT, UTAH

Sec. 301. [Uintah unit, Central Utah project—Appropriation authorized.]—Pursuant to the authorization for construction, operation, and maintenance of the Uintah unit, central Utah project, Utah, as provided in section 1 of the Act of April 11, 1956 (70 Stat. 105), as amended by section 501(a) of the Colorado River Basin Project Act (82 Stat. 897), there is authorized to be appropriated for fiscal year 1978 and thereafter, for the construction of said Uintah unit, the sum of $90,247,000 (based on January 1976 price levels) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indexes applicable to the type of construction involved. (90 Stat. 1327)

EXPLANATORY NOTE

References in the Text. The Act of April 11, 1956 (70 Stat. 105), referred to in the text, appears in Volume II at page 1248. The Colorado River Basin Project Act (82 Stat. 897; 43 U.S.C. §§ 1501-1556), also referred to in the text, appears in Volume IV in chronological order.

Sec. 302. [Class 1 equivalency authorized.]—Not withstanding any other provision of law, lands held in a single ownership which may be eligible to receive water from, through, or by means of the Uintah works shall be limited to one hundred and sixty acres of class I land or the equivalent thereof in other land classes, as determined by the Secretary of the Interior. (90 Stat. 1327)

TITLE IV

AMERICAN CANAL EXTENSION, EL PASO, TEXAS

Sec. 401. [American Canal extension, Rio Grande project, authorized.]—The Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof and supplementary thereto), in order to salvage water losses, eliminate hazards to public safety, and 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, is authorized as a part of the Rio Grande project, New Mexico-Texas, to construct, operate, and maintain, wholly within the United States, extensions of the American Canal approximately thirteen miles in total length, commencing in the vicinity of International Dam, El Paso, Texas, and extending to Riverside Heading; together with laterals, pumping plants, waste-

ways, and appurtenant facilities as required to assure continuing irrigation service to the project. Existing facilities no longer required for project service shall be removed or obliterated as a part of the program herein authorized. (90 Stat. 1327)

Sec. 402. [Terms of repayment contract.]—Construction of the American Canal extension shall not be undertaken until the Secretary of the Interior has entered into a repayment contract with the El Paso County Water Improvement District Number 1, in which said irrigation district contracts to repay to the United States, for fifty years, an annual sum representing the value of eleven thousand six hundred acre-feet of salvaged water at a price per acre-foot established by the Secretary on the basis of an up-to-date payment capacity determination. Costs of the American Canal in excess of those repaid by the El Paso County Water Improvement District Number 1 shall be nonreimbursable and nonreturnable in recognition of benefits accruing to public safety and international considerations. (90 Stat. 1328)

Sec. 403. [Appropriation authorized.]—There is hereby authorized to be appropriated for fiscal year 1978 and thereafter for construction of the American Canal extension the sum of $21,714,000 (January 1976 price levels), plus or minus such amounts, if any, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project. (90 Stat. 1328).

TITLE V

ALLEN CAMP UNIT, CALIFORNIA

Sec. 501. [Allen Camp unit, Pit River division, Central Valley Project, authorized.]—For the purposes of providing irrigation water supplies, controlling floods, conserving and developing fish and wildlife resources, enhancing outdoor recreation opportunities, and for other related purposes, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain the Allen Camp unit, Pit River division, as an addition to, and an integral part of, the Central Valley project, California. The principal works of the unit shall consist of Allen Camp Dam and Reservoir and necessary water diversion, conveyance, distribution, and drainage facilities, and other appurtenant works for the delivery of water to the unit, a wildlife refuge, channel rectification works and levees, and recreation facilities. (90 Stat. 1328)

Sec. 502. [Integration with other works.]—Subject to the provisions of this title, the operation of the Allen Camp unit shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project in such manner

as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available. (90 Stat. 1328)

Sec. 503. [Class 1 equivalency authorized.]—Notwithstanding any other provision of law, lands held in a single ownership which may be eligible to receive water from, through, or by means of the Allen Camp unit works shall be limited to one hundred and sixty acres of class I land or the equivalent thereof in other land classes, as determined by the Secretary of the Interior. (90 Stat. 1328)

Sec. 504. [Certain costs nonreimbursable.]—The costs of the Allen Camp unit allocated to flood control, conservation and development of fish and wildlife resources, and the enhancement of recreation opportunities shall be nonreimbursable. (90 Stat. 1328)

Sec. 505. [Replacement of roads and bridges.]—The Secretary is hereby authorized to replace those roads and bridges now under the jurisdiction of the Secretary of Agriculture which will be inundated or otherwise rendered unusable by construction and operation of the unit. Said replacements are to be the standards (including provisions for the future) which would be used by the Secretary of Agriculture in constructing similar roads to provide similar services. (90 Stat. 1328)

Sec. 506. [Surplus crops.]—For a period of ten years from the date of enactment of this title, no water from the unit authorized by this title shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949 (63 Stat. 1051; 7 U.S.C. 1421), or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301 (b)(10) of the Agricultural Adjustment Act of 1938 (62 Stat. 1251), as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (90 Stat. 1329)

EXPLANATORY NOTE

References in the Text. The Agricultural Act of 1949 and the Agricultural Adjustment Act of 1938, referred to in the text, do not appear herein.

Sec. 507. [Appropriation authorized.]—There is hereby authorized to be appropriated for fiscal year 1978 and thereafter the sum of $64,220,000 (January 1976 price levels) for the construction of the Allen Camp unit, plus or minus such amounts as are justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the construction of works related to the Allen Camp unit. There are also authorized to be appropriated such sums as may be required to operate and maintain said unit and associated facilities. (90 Stat. 1329)

TITLE VI

LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

Sec. 601. [Leadville Mine drainage tunnel—Rehabilitation authorized.]—The Secretary of the Interior is authorized to rehabilitate the fed-

erally owned Leadville Mine drainage tunnel, Lake County, Colorado, by installing a concrete-lined, structural steel-supported, eight-foot-diameter, horseshoe-shaped tunnel section extending for an approximate distance of one thousand feet inward, from the portal of said tunnel or for the distance required to enter structurally competent geologic formations. The Secretary is further authorized to maintain the rehabilitated tunnel in a safe condition and to monitor the quality of the tunnel discharge. (90 Stat. 1329)

Sec. 602. [Appropriation authorized—nonreimbursable costs.]—There is authorized to be appropriated for fiscal year 1978 and thereafter $2,750,000 (January 1976 price levels) for the rehabilitation of the tunnel. There is also authorized to be appropriated such sums as are necessary for maintenance of the rehabilitated tunnel, water quality monitoring and investigations leading to recommendations for treatment measures if necessary to bring the quality of the tunnel discharge into compliance with applicable water quality statutes. All funds authorized to be appropriated by this title, together with such sums as have been expended for emergency work on the Leadville Mine drainage tunnel by the Bureau of Reclamation, shall be nonreimbursable. (90 Stat. 1329)

TITLE VII

MCGEE CREEK PROJECT, OKLAHOMA

Sec. 701. [McGee Creek project authorized.]—The Secretary of the Interior is authorized to construct, operate, and maintain the McGee Creek project, Oklahoma, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) and the provisions of this title for the purposes of storing, regulating, and conveying water for municipal and industrial use, conserving and developing fish and wildlife resources, providing outdoor recreation opportunities, developing a scenic recreation area, developing a wildlife management area and controlling floods. The principal physical works of the project shall consist of a dam and reservoir on McGee Creek, appurtenant conveyance facilities and public outdoor recreation facilities. (90 Stat. 1329)

Sec. 702. [Scenic recreation and wildlife management areas.]—To provide for the protection, preservation, use, and enjoyment by the general public of the scenic and esthetic values of the canyon area adjacent to the upper portion of the McGee Creek Reservoir, the Secretary of the Interior is hereby authorized to purchase privately owned lands, not to exceed twenty thousand acres, for the aforesaid scenic recreation and wildlife management areas. The Secretary of the Interior is also authorized to construct such facilities as he determines to be appropriate for utilization of the scenic and wildlife management areas for the safety, health, protection, and compatible use by the visiting public. (90 Stat. 1330)

Sec. 703. [Rules and regulations for scenic recreation and wildlife management areas.]—The Secretary of the Interior shall make such rules and regulations as are necessary to carry out the provisions and intent of section

702 of this title and may enter into an agreement or agreements with a non-Federal public body or bodies for operation and maintenance of the scenic recreational and wildlife management areas. (90 Stat. 1330)

Sec. 704. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the project is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue. (90 Stat. 1330)

Sec. 705. (a) [Terms of repayment contract.]—The Secretary of the Interior is authorized to enter into a contract with a qualified entity or entities, for delivery of water and for repayment of all the reimbursable construction costs. All costs of acquiring, developing, operating, and maintaining the scenic recreation and wildlife management areas authorized by section 702 of this title shall be nonreimbursable.

(b) [Contracts required before construction.]—Construction of the project shall not be commenced until the contracts and agreements required by this title have been entered into.

(c) [Transfer of project works—Conditions of operation.]—Upon execution of the contract referred to in section 705 (a) of this title, and upon completion of construction of the project, the Secretary of the Interior shall transfer to a qualified contracting entity or entities the care, operation, and maintenance of the project works; and, after such transfer is made, will reimburse, subject to such amounts as may be provided in the appropriation Acts, the contractor annually for that portion of the year's operation and maintenance costs, which, if the United States had continued to operate the project, would have been nonreimbursable. Prior to assuming care, operation, and maintenance of the project works the contracting entity or entities shall agree to operate them in accordance with regulations prescribed by the Secretary of the Army with respect to flood control, and by the Secretary of the Interior with respect to fish, wildlife, and recreation.

(d) [Permanent right to use of reservoir.]—Upon execution of the contract referred to in section 705 (a) of this title, and upon completion of construction of the project, the contracting entity or entities, their designee or designees, shall have a permanent right to use the reservoir and related facilities of the McGee Creek project in accordance with said contract. (90 Stat. 1330)

Sec. 706. [Fish and wildlife resources—Recreation opportunities.]—The conservation and development of the fish and wildlife resources, and the enhancement of recreation opportunities in connection with the McGee Creek project, except the scenic recreation and wildlife management areas authorized by section 702 of this title, shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213), as amended. (90 Stat. 1331)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (79 Stat. 213), referred to in the text, appears in Volume III at page 1820.

Sec. 707. [Appropriation authorized.]—There is hereby authorized to be appropriated for fiscal year 1978 and thereafter, for construction of the McGee Creek project the sum of $83,239,000 (January 1976 price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for the operation and maintenance of the project. (90 Stat. 1331)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3283, Public Law 94–423 in the 94th Congress. Reported in Senate from Interior and Insular Affairs August 5, 1976; S. Rept. No. 94–1122. Passed Senate August 6, 1976. Passed House amended, August 26, 1976. Senate agrees to House amendments September 13, 1976. Companion bill H.R. 14578 reported in House from Interior and Insular Affairs August 3, 1976; H.R. Rept. No. 94–1382. Passed House August 26, 1976.

AMENDED CONTRACT WITH SANTA YNEZ RIVER WATER CONSERVATION DISTRICT

An act to authorize the Secretary of the Interior to provide relief to the Santa Ynez River Water Conservation District due to delivery of water to the Santa Ynez Indian Reservation lands. (Act of October 1, 1976, Public Law 94–442, 90 Stat 1474)

[Execution of amendatory contract authorized.]—The Secretary of the Interior is authorized to amend the repayment contract dated March 16, 1960, with the Santa Ynez River Water Conservation District, to reduce by $1,120, annually, the amount due the United States. The reduction is to commence with the payment due on January 1 of the year following passage of this Act and continue as long as all of the lands of the Santa Ynez Indian Reservation, as presently constituted, remain in Federal ownership. (90 Stat. 1474)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Background. In 1960 the Santa Ynez River Water Conservation District entered into a contract with the United States to repay a Small Reclamation Project loan of $3,800,000 which was used to construct a water distribution system that was completed in 1965. The Santa Ynez Indian Reservation consists of 88 acres within the 10,000 acres of the District. The District supplies water to the Reservation but is unable to levy the annual tax assessment against the reservation lands to pay the water service charges because the lands are in Federal ownership. The purpose of this Act is to reduce the District's annual repayment obligation to the United States for the loan by the approximate amount of these water service charges.

Legislative History. H.R. 589, Public Law 94–442 in the 94th Congress. Reported in House from Interior and Insular Affairs September 15, 1975; H.R. Rept. No. 94–475. Passed House October 6, 1975. Reported in Senate from Interior and Insular Affairs September 16, 1976; S. Rept. No. 94–1244. Passed Senate September 22, 1976.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

An act to establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes. (Act of October 21, 1976, Public Law 94-579, 90 Stat. 2743)

TABLE OF CONTENTS

TITLE I—SHORT TITLE; POLICIES; DEFINITIONS

Sec. 101. Short title.
Sec. 102. Declaration of policy.
Sec. 103. Definitions.

TITLE II—LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

Sec. 201. Inventory and identification.
Sec. 202. Land use planning.
Sec. 203. Sales.
Sec. 204. Withdrawals.
Sec. 205. Acquisitions.
Sec. 206. Exchanges.
Sec. 207. Qualified conveyees.
Sec. 208. Conveyances.
Sec. 209. Reservation and conveyance of mineral interest.
Sec. 210. Coordination with State and local governments.
Sec. 211. Omitted lands.
Sec. 212. Recreation and Public Purposes Act.
Sec. 213. National forest townsites.
Sec. 214. Unintentional Trespass Act.

TITLE III—ADMINISTRATION

Sec. 301. BLM directorate and functions.
Sec. 302. Management of use, occupancy, and development.
Sec. 303. Enforcement authority.
Sec. 304. Service charges and reimbursements.
Sec. 305. Deposits and forfeitures.
Sec. 306. Working capital fund.
Sec. 307. Studies, cooperative agreements, and contributions.
Sec. 308. Contracts for surveys and resource protection.
Sec. 309. Advisory councils and public participation.
Sec. 310. Rules and regulations.
Sec. 311. Program report.
Sec. 312. Search and rescue.
Sec. 313. Sunshine in government.
Sec. 314. Recordation of mining claims and abandonment.
Sec. 315. Recordable disclaimers of interest.
Sec. 316. Correction of conveyance documents.
Sec. 317. Mineral revenues.
Sec. 318. Appropriation authorization.

TITLE IV—RANGE MANAGEMENT

Sec. 401. Grazing fees.
Sec. 402. Grazing leases and permits.
Sec. 403. Grazing advisory boards.
Sec. 404. Management of certain horses and burros.

TITLE V—RIGHTS-OF-WAY

Sec. 501. Authorization to grant rights-of-way.
Sec. 502. Cost-share road authorization.
Sec. 503. Corridors.
Sec. 504. General provisions.
Sec. 505. Terms and conditions.
Sec. 506. Suspension and termination of rights-of-way.
Sec. 507. Rights-of-way for Federal agencies.
Sec. 508. Conveyance of lands.
Sec. 509. Existing rights-of-way.
Sec. 510. Effect on other laws.
Sec. 511. Coordination of applications.

TITLE VI—DESIGNATED MANAGEMENT AREAS

Sec. 601. California desert conservation area.
Sec. 602. King range.
Sec. 603. Bureau of land management wilderness study.

TITLE VII—EFFECT ON EXISTING RIGHTS: REPEAL OF EXISTING LAWS; SEVERABILITY

Sec. 701. Effect on existing rights.
Sec. 702. Repeal of laws relating to homesteading and small tracts.
Sec. 703. Repeal of laws related to disposals.
Sec. 704. Repeal of withdrawal laws.
Sec. 705. Repeal of laws relating to administration of public lands.
Sec. 706. Repeal of laws relating to rights-of-way.
Sec. 707. Severability.

TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

Sec. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976". (90 Stat. 2744; 43 U.S.C. §1701 note)

DECLARATION OF POLICY

Sec. 102. (a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process

coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory

authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law. (90 Stat. 2744; 43 U.S.C. §1701)

DEFINITIONS

Sec. 103. Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act—

(a) [Areas of critical environmental concern.]—The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) [Holder.]—The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act.

(c) [Multiple use.]—The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) [Public involvement.]—The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decision-making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) [Public lands.]—The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) [Right-of-way.]—The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act.

(g) [Secretary.]—The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) [Sustained yield.]—The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) [Wilderness.]—The term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131–1136).

(j) [Withdrawal.]—The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) [Allotment management plan.]—An "allotment management plan"means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) [Principal or major uses.]—The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) [Department.]—The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) [Bureau.]—The term "Bureau (sic) means the Bureau of Land Management.

(o) [Eleven contiguous Western States.]—The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) [Grazing permit and lease.]—The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock. (90 Stat. 2745; 43 U.S.C. § 1702)

TITLE II—LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

INVENTORY AND IDENTIFICATION

Sec. 201. (a) [Prepare and maintain inventory.]—The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) [Boundaries of public lands.]—As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands. (90 Stat. 2747; 43 U.S.C. § 1711)

LAND USE PLANNING

Sec. 202. (a) [Land use plans.]—The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) [Land use plans coordination.]—In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) [Criteria for development and revision of land use plans.]—In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) Give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended, and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) [Review of existing plans.]—Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any

land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) [Implementation of land use plans.]—The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to sec-

tion 204 or other action pursuant to applicable law: *Provided,* That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) [Public involvement.]—The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands. (90 Stat. 2747; 43 U.S.C. § 1712)

SALES

Sec. 203. (a) [Disposal criteria.]—A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 202 of this Act, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) [Desert land of agricultural value.]—Where the Secretary determines that land to be conveyed under clause (3) of subsection (a) of this section is of agricultural value and is desert in character, such land shall be conveyed either under the sale authority of this section or in accordance with other existing law.

(c) [Sale of public lands in excess of 2,500 acres.]—Where a tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Secretary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation.

A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(d) [Sales price.]—Sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary.

(e) [Size of tracts.]—The Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

(f) [Potential purchasers.]—Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(1) the State in which the land is located;

(2) the local government entities in such State which are in the vicinity of the land;

(3) adjoining landowners;

(4) individuals; and

(5) any other person.

(g) [Acceptance or rejection of offer.]—The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding at his invitation no later than thirty days after the receipt of such offer or, in the case of a tract in excess of two thousand five hundred acres, at the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines

that consummation of the sale would not be consistent with this Act or other applicable law. (90 Stat. 2750; 43 U.S.C. § 1713)

WITHDRAWALS

Sec. 204. (a) [Withdrawal authority.]—On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(b) [Notice in Federal Register.]—(1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c) [Notification to Congress.]—(1) On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring

and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) [Withdrawal of less than 5,000 acres.]—A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or an agency head—

(1) for such period of time as he deems desirable for a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) [Emergency withdrawal.]—When the Secretary determines, or when the Committee on Interior and Insular Affairs of either the House of Representatives or the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable and (b)(1) of this section. The information required, in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) [Report to congressional committees.]—All withdrawals and extensions thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

(g) [Pending applications for withdrawal.]—All applications for withdrawal pending on the date of approval of this Act shall be processed and adjudicated to conclusion within fifteen years of the date of approval of this Act in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

(h) [Public hearing.]—All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of

this section) shall be promulgated after an opportunity for a public hearing.

(i) [Lands administered by other agencies.]—In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply.

(j) [Withdrawals authorized by Congress.]—The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 225: 16 U.S.C. 431–433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the date of approval of this Act or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)).

(k) [Appropriation authorization.]—There is hereby authorized to be appropriated the sum of $10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(l) [Review of withdrawals.]—(1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives,

together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are hereby authorized to be appropriated not more than $10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved. (90 Stat. 2751; 43 U.S.C. § 1714)

ACQUISITIONS

Sec. 205. (a) [National Forest System acquisitions—Limitation.]—Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided,* That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by

eminent domain within the boundaries of units of the National Forest System.

(b) [Consistent with land-use plans.]—Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) [Acquired lands to become public lands.]—Lands and interests in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the "Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) [Applicability of rules and regulations.]—Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto. (90 Stat. 2755; 43 U.S.C. § 1715)

EXCHANGES

Sec. 206. [Exchange of lands.]—A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided,* That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) [Acceptance of titles.]—In exercising the exchange authority granted by subsection (a) or by section 205(a) of this Act, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands

exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) [Applicability of rules and regulations.]—Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System. (90 Stat. 2756; 43 U.S.C. § 1716)

QUALIFIED CONVEYEES

Sec. 207. [Disposition of lands only to American citizens.]—No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States. (90 Stat. 2757; 43 U.S.C. § 1717)

CONVEYANCES

Sec. 208. [Issuance of patents — Terms and conditions.]—The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 206(b) of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided,* That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further,* That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs. (90 Stat. 2757; 43 U.S.C. § 1718)

RESERVATION AND CONVEYANCE OF MINERALS

Sec. 209. (a) [Reservation of mineral rights.]—All conveyances of title issued by the Secretary, except those involving land exchanges provided for

in section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b).

(b) [Conveyance of mineral rights under certain conditions.]—The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided*, That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current. (90 Stat. 2757; 43 U.S.C. § 1719)

COORDINATION WITH STATE AND LOCAL GOVERNMENTS

Sec. 210. [Notification of public officials.]—At least sixty days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use

of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands. (90 Stat. 2758; 43 U.S.C. § 1720)

OMITTED LANDS

Sec. 211. OMITTED LANDS.—**(a) [Conveyance of islands—Surveys.]**—The Secretary is hereby authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat. 741 as amended; 43 U.S.C. 869 et seq.), as amended, but without regard to the acreage limitations contained therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey: *Provided, however,* That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

(b) [Conveyance of lands omitted from surveys—Survey required—Conveyance to occupant.]—(1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act, but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided,* That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or services, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occupied and developed for a five-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c) [Coordination with local agencies.]—(1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) and/or title IV of the Intergovernmental Co-

operation Act of 1968 (82 Stat. 1098, 1103–4) have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(2) The provisions of section 210 of this Act shall be applicable to all conveyances under this section.

(d) [Provision not applicable.]—The final sentence of section 1(c) of the Recreation and Public Purposes Act shall not be applicable to conveyances under this section.

(e) [Limitations on use of conveyance.]—No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) [Provisions not applicable.]—The provisions of this section shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) [Existing Acts unaffected.]Nothing in this section shall supersede the provisions of the Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068), as amended, and the Act of May 31, 1962 (76 Stat. 89), or any other Act authorizing the sale of specific omitted lands. (90 Stat. 2758; 43 U.S.C. § 1721)

RECREATION AND PUBLIC PURPOSES ACT

Sec. 212. [Recreation and Public Purposes Act amended.]—The Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869–4), as amended, is further amended as follows:

(a) The second sentence of subsection (a) of the first section of that Act (43 U.S.C. 869(a)) is amended to read as follows: "Before the land may be disposed of under this Act it must be shown to the satisfaction of the Secretary that the land is to be used for an established or definitely proposed project, that the land involved is not of national significance nor more than is reasonably necessary for the proposed use, and that for proposals of over 640 acres comprehensive land use plans and zoning regulations applicable to the area in which the public lands to be disposed of are located have been adopted by the appropriate State or local authority. The Secretary shall provide an opportunity for participation by affected citizens in disposals under this Act, including public hearings or meetings where he deems it appropriate to provide public comments, and shall hold at least one public meeting on any proposed disposal of more than six hundred forty acres under this Act."

(b) Subsection (b)(i) of the first section of that Act (43 U.S.C. 869(b)) is amended to read as follows:

"(b) Conveyances made in any one calendar year shall be limited as follows:

"(i) For recreational purposes:

"(A) to any State or the State park agency or any other agency having jurisdiction over the State park system of such State designated by the Governor of that State as its sole representative for acceptance of lands under this provision, hereinafter referred to as the State, or to any political subdivision of such State, six thousand four hundred acres, and such additional acreage as may be needed for small roadside parks and rest sites of not more than ten acres each.

"(B) To any nonprofit corporation or nonprofit association, six hundred and forty acres.

"(C) No more than twenty-five thousand six hundred acres may be conveyed for recreational purposes under this Act in any one State per calendar year. Should any State or political subdivision, however, fail to secure, in any one year, six thousand four hundred acres, not counting lands for small roadside parks and rest sites, conveyances may be made thereafter if pursuant to an application on file with the Secretary of the Interior on or before the last day of said year and to the extent that the conveyance would not have exceeded the limititations of said year.".

(c) Section 2(a) of that Act (43 U.S.C. 869–1) is amended by inserting "or recreational purposes" immediately after "historic-monument purposes".

(d) Section 2(b) of that Act (43 U.S.C. 869–1) is amended by adding ", except that leases of such lands for recreational purposes shall be made without monetary consideration" after the phase "reasonable annual rental". (90 Stat. 2759)

NATIONAL FOREST TOWNSITES

Sec. 213. The Act of July 31, 1958 (72 Stat. 438, 7 U.S.C. 1012a, 16 U.S.C. 478a), is amended to read as follows: "When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however*, That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands." (90 Stat. 2760)

UNINTENTIONAL TRESPASS ACT

Sec. 214. (a) [Right of first refusal.]—Not withstanding the provisions of the Act of September 26, 1968 (82 Stat. 870; 43 U.S.C. 1431–1435), hereinafter called the "1968 Act", with respect to applications under the 1968 Act which were pending before the Secretary as of the effective date of this subsection and which he approves for sale under the criteria prescribed by the 1968 Act, he shall give the right of first refusal to those having a preference right under section 2 of the 1968 Act. The Secretary shall offer such lands to such preference right holders at their fair market value (exclusive of any values added to the land by such holders and their predecessors in interest) as determined by the Secretary as of September 26, 1973.

(b) [Notification.]—Within three years after the date of approval of this Act, the Secretary shall notify the filers of applications subject to paragraph (a) of this section whether he will offer them the lands applied for and at what price; that is, their fair market value as of September 26, 1973, excluding any value added to the lands by the applicants or their predecessors in interest. He will also notify the President of the Senate and the Speaker of the House of Representatives of the lands which he has determined not to sell pursuant to paragraph (a) of this section and the reasons therefor. With respect to such lands which the Secretary determined not to sell, he shall take no other action to convey those lands or interests in them before the end of ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the date the Secretary has submitted such notice to the Senate and House of Representatives. If, during that ninety-day period, the Congress adopts a concurrent resolution stating the length of time such suspension of action should continue, he shall continue such suspension for the specified time period. If the committee to which a resolution has been referred during the said ninety-day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the suspension of action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same suspension of action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly

privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c) [Completion of applications.]—Within five years after the date of approval of this Act, the Secretary shall complete the processing of all applications filed under the 1968 Act and hold sales covering all lands which he has determined to sell thereunder. (90 Stat. 2760; 43 U.S.C. § 1722)

TITLE III—ADMINISTRATION

BLM DIRECTORATE AND FUNCTIONS

Sec. 301. (a) The Bureau of Land Management established by Reorganization Plan Numbered 3, of 1946 (5 U.S.C. App. 519) shall have as its head a Director. Appointments to the position of Director shall hereafter be made by the President, by and with the advice and consent of the Senate. The Director of the Bureau shall have a broad background and substantial experience in public land and natural resource management. He shall carry out such functions and shall perform such duties as the Secretary may prescribe with respect to the management of lands and resources under his jurisdiction according to the applicable provisions of this Act and any other applicable law.

(b) Subject to the discretion granted to him by Reorganization Plan Numbered 3 of 1950 (43 U.S.C. 1451 note), the Secretary shall carry out through the Bureau all functions, powers, and duties vested in him and relating to the administration of laws which, on the date of enactment of this section, were carried out by him through the Bureau of Land Management established by section 403 of Reorganization Plan Numbered 3 of 1946. The Bureau shall administer such laws according to the provisions thereof existing as of the date of approval of this Act as modified by the provisions of this Act or by subsequent law.

(c) In addition to the Director, there shall be an Associate Director of the Bureau and so many Assistant Directors, and other employees, as may be necessary, who shall be appointed by the Secretary subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter 3 of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) Nothing in this section shall affect any regulation of the Secretary with respect to the administration of laws administered by him through the Bureau on the date of approval of this section. (90 Stat. 2762; 43 U.S.C. § 1731)

MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

Sec. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available,

except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the

Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail. (90 Stat. 2762; 43 U.S.C. § 1732)

ENFORCEMENT AUTHORITY

Sec. 303. (a) The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

(c) (1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant

to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.

(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 601 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.

(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

(g) The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited. (90 Stat. 2763; 43 U.S.C. § 1733)

SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS

Sec. 304. (a) Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section "reasonable costs" include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought

by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs.

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds. (90 Stat. 2765: U.S.C. § 1734)

DEPOSITS AND FORFEITURES

Sec. 305. (a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), shall be expended for the benefit of such land only.

(c) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds. (90 Stat. 2765; 43 U.S.C. § 1735)

WORKING CAPITAL FUND

Sec. 306.(a) There is hereby established a working capital fund for the management of the public lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended), and regulations promulgated thereunder, supplies and equipment services in support of Bureau programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Secretary for the Bureau.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations, and funds of the Bureau, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated a sum not to exceed $3,000,000 as initial capital of the working capital fund. (90 Stat. 2766; 43 U.S.C. § 1736)

STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS

Sec. 307. (a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands.

(b) Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost. (90 Stat. 2766; 43 U.S.C. § 1737)

CONTRACTS FOR SURVEYS AND RESOURCE PROTECTION

Sec. 308. (a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations of the Bureau. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an

applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure. (90 Stat. 2767; 43 U.S.C. § 1738)

ADVISORY COUNCILS AND PUBLIC PARTICIPATION

Sec. 309. (a) The Secretary shall establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat 770; 5 U.S.C. App. 1).

(b) Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary.

(d) An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands. (90 Stat. 2767; Act of October 25, 1978, 92 Stat. 1808; 43 U.S.C. § 1739)

EXPLANATORY NOTE

1978 Amendment. Section 13 of the Act of October 25, 1978 (Public Law 95-514, 92 Stat. 1808) amended subsection (a) of the text by substituting "shall establish" for "is authorized to establish" in the first sentence. The 1978 Act does not appear herein.

RULES AND REGULATIONS

Sec. 310. The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter

5 of title 5 of the United States Code, without regard to section 553 (a) (2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical. (90 Stat. 2767; 43 U.S.C. § 1740)

PUBLIC LANDS PROGRAM REPORT

Sec. 311. (a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House and Senate and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years. (90 Stat. 2768; 43 U.S.C. § 1741)

SEARCH AND RESCUE

Sec. 312. Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary (a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands, (b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and (c) in transporting deceased persons or persons seriously ill or injured to the nearest place where interested parties or local authorities are located. (90 Stat. 2768; 43 U.S.C. § 1742)

SUNSHINE IN GOVERNMENT

Sec. 313. (a) Each officer or employee of the Secretary and the Bureau who—

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit, lease, or right-of-way under, or (B) applies for or acquires any land or interests therein under, or (C) is otherwise subject to the provisions of, this Act,

shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) The Secretary shall—

(1) act within ninety days after the date of enactment of this Act—

(A) to define the term "known financial interests" for the purposes of subsection (a) of this secion; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both. (90 Stat. 2768; 43 U.S.C. § 1743)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Sec. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or

placer mining claim or mill or tunnel site located after the date of approval of this Act shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law. (90 Stat. 2769; 43 U.S.C. § 1744)

RECORDABLE DISCLAIMERS OF INTEREST IN LAND

Sec. 315. (a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document or disclaimer shall be issued pursuant to this section unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be deposited to the then-current appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quit-claim deed from the United States. (90 Stat 2770; 43 U.S.C. § 1745)

CORRECTION OF CONVEYANCE DOCUMENTS

Sec. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In

addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands. (90 Stat. 2770; 43 U.S.C. § 1746)

MINERAL REVENUES—LOANS TO STATES AND POLITICAL SUBDIVISIONS

Sec. 317. (a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. 181, 191), as amended, is further amended to read as follows: "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 percentum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts', as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.".

(b) Funds now held pursuant to said section 35 by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C–A; C–B; U–A and U–B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.

(c) (1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended [30 U.S.C. 181 et seq.]. Such loans shall be confined to the uses specified for the 50 per centum of mineral leasing revenues to be received by such States and subdivisions pursuant to section 35 of such Act [30 U.S.C. 191].

(2) The total amount of loans outstanding pursuant to this section for any State and political subdivisions thereof in any year shall be not more than the anticipated mineral leasing revenues to be received by that State pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], for the ten years following.

(3) The Secretary, after consultation with the Governors of the affected States, shall allocate such loans among the States and their political subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(4) Loans made pursuant to this section shall be subject to such terms and conditions as the Secretary determines necessary to assure the achievement of the purpose of this section. The Secretary shall promulgate such regulations as may be necessary to carry out the provisions of this section no later than three months after August 20, 1978.

(5) Loans made pursuant to this section shall bear interest equivalent to the lowest interest rate paid on an issue of at least $1,000,000 of tax exempt bonds of such State or any agency thereof within the preceding calendar year.

(6) Any loan made pursuant to this section shall be secured only by a pledge of the revenues received by the State or the political subdivision thereof pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], and shall not constitute an obligation upon the general property or taxing authority of such unit of government.

(7) Notwithstanding any other provision of law, loans made pursuant to this section may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under this section.

(8) Nothing in this section shall be construed to preclude any forebearance [sic] for the benefit of the borrower including loan restructuring, which may be determined by the Secretary as justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made pursuant to this section.

(9) Recipients of loans made pursuant to this section shall keep such records as the Secretary shall prescribe by regulation, including records which fully disclose the disposition of the proceeds of such assistance and such other records as the Secretary may require to facilitate an effective audit. The Secretary and the Comptroller General of the United States or their duly authorized representatives shall have access, for the purpose of audit, to such records.

(10) No person in the United States shall, on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or part with funds made available under this section.

(11) All amounts collected in connection with loans made pursuant to

this section, including interest payments or repayments of principal on loans, fees, and other moneys, derived in connection with this section, shall be deposited in the Treasury as miscellaneous receipts. (90 Stat. 2770; Act of August 20, 1978, 92 Stat. 515; 43 U.S.C. § 1747)

EXPLANATORY NOTES

1978 Amendment. Section 1 (f) of the Act of August 20, 1978 (Public Law 95-352, 92 Stat. 515) amended subsection (c) of the text by: redesignating former paragraph (1) as paragraphs (1) and (2); striking provisions establishing interest rate requirements from paragraph (1) as redesignated; striking the exception for Alaska and requirements for repayment from paragraph (2) as redesignated; redesignating former paragraphs (2) and (3) as paragraphs (3) and (4) respectively; and adding paragraphs (5) through (11). The 1978 Act does not appear herein.

Reference in the Text. Section 35 of the Act of February 25, 1920 (the Mineral Leasing Act of 1920), referred to in and amended by the subsection (a) of the text, is set forth in Supplement I under "February 25, 1920—Mineral Leasing Act" as it appears in Chapter 3A, Subchapter 1, § 191, of Title 30 of the U.S. Code (1982 ed.).

APPROPRIATION AUTHORIZATION

Sec. 318. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act, but no amounts shall be appropriated to carry out after October 1, 1978, any program, function, or activity of the Bureau under this or any other Act unless such sums are specifically authorized to be appropriated as of the date of approval of this Act or are authorized to be appropriated in accordance with the provisions of subsection (b) of this section.

(b) Consistent with section 607 of the Congressional Budget Act of 1974, beginning May 15, 1977, and not later than May 15 of each second even numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a request for the authorization of appropriations for all programs, functions, and activities of the Bureau to be carried out during the four-fiscal-year period beginning on October 1 of the calendar year following the calendar year in which such request is submitted. The Secretary shall include in his request, in addition to the information contained in his budget request and justification statement to the Office of Management and Budget, the funding levels which he determines can be efficiently and effectively utilized in the execution of his responsibilities for each such program, function, or activity notwithstanding any budget guidelines or limitations imposed by any official or agency of the executive branch.

(c) Nothing in this section shall apply to the distribution of receipts of the Bureau from the disposal of lands, natural resources, and interests in lands in accordance with applicable law, nor to the use of contributed funds, private deposits for public survey work, and townsite trusteeships, nor to fund allocations from other Federal agencies, reimbursements from both Federal and non-Federal sources, and funds expended for emergency firefighting and rehabilitation.

(d) In exercising the authority to acquire by purchase granted by subsection (a) of section 205 of this Act, the Secretary may use the Land and

Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes. (90 Stat. 2771; 43 U.S.C. § 1748)

TITLE IV—RANGE MANAGEMENT

GRAZING FEES

Sec. 401. (a) [Study of grazing fees.]—The Secretary of Agriculture andthe Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of this Act, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b) [Rehabilitation of ranges—Taylor Grazing Act amended.]—(1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or $10,000,000 per annum, whichever is greater of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the sixteen contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range bet-

terment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332 (c) of title 42 of the United States Code.

(2) The first clause of section 10 (b) of the Taylor Grazing Act (48 Stat. 1269), as amended by the Act of August 6, 1947 (43 U.S.C. 315i), is hereby repealed. All distributions of moneys made under section 401 (b) (1) of this Act shall be in addition to distributions made under section 10 of the Taylor Grazing Act and shall not apply to distribution of moneys made under section 11 of that Act. The remaining moneys received by the United States as fees for grazing domestic livestock on the public lands shall be deposited in the Treasury as miscellaneous receipts.

(3) Section 3 of the Taylor Grazing Act, as amended (43 U.S.C. 315), is further amended by—

(a) Deleting the last clause of the first sentence thereof, which begins with "and in fixing," deleting the comma after "time", and adding to that first sentence the words "in accordance with governing law".

(b) Deleting the second sentence thereof. (90 Stat. 2772; Act of October 25, 1978, 92 Stat. 1806; 43 U.S.C. § 1751)

EXPLANATORY NOTE

1978 Amendment. Section 6(6) of the Act of October 25, 1978 (Public Law 95-514, 92 Stat. 1806) amended subsection (b) (1) of the text by inserting "or $10,000,000 per annum, whichever is greater" following "50 per centum" and by substituting "sixteen contiguous Western States" for "eleven contiguous Western States". The 1978 Act does not appear herein.

GRAZING LEASES AND PERMITS

Sec. 402. (a) [Terms of grazing leases and permits.]—Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b)[Leases and permits for less than 10-year period.]—Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided*, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: *Provided further*, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

(c) [Compliance with rules and regulations.]—So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 202 of this Act or section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477; 16 U.S.C. 1601), (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) [Allotment management plans—Requirements.]—All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 403 of this Act, and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new

plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public Rangelands Improvement Act of 1978 [43 U.S.C. 1901 et seq.]".

(e) [Terms and conditions.]—In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) [Right of appeal.]—Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) [Cancellation of permit or lease.]—Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) [Existing law unaffected.]—Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forestry issuance of grazing permits and leases. (90 Stat. 2773; Act of October 25, 1978, 92 Stat. 1807; 43 U.S.C. § 1752)

EXPLANATORY NOTE

1978 Amendment. Sections 7 and 8 of the Act of October 25, 1978 (Public Law 95-514, 92 Stat. 1807) amended subsections (a), (b) (3), (d) and (e) of the text to read as they appear above. The 1978 Act does not appear herein.

GRAZING ADVISORY BOARDS

Sec. 403. [Grazing advisory board established.]—(a) For each Bureau district office and National Forest headquarters office in the sixteen contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Each grazing advisory board shall meet at least once annually.

(e) Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1) shall apply to grazing advisory boards.

(f) The provisions of this section shall expire December 31, 1985. (90 Stat. 2775; Act of October 25, 1978, 92 Stat. 1808; 43 U.S.C. § 1753)

EXPLANATORY NOTE

1978 Amendment. Section 10 of the Act of October 25, 1978 (Public Law 95-514, 92 Stat. 1808) amended subsection (a) of the text by substituting "sixteen contiguous Western States" for "eleven contiguous Western States". The 1978 Act does not appear herein.

MANAGEMENT OF CERTAIN HORSES AND BURROS

Sec. 404. Sections 9 and 10 of the Act of December 15, 1971 (85 Stat 649, 651; 16 U.S.C. 1331, 1339–1340) are renumbered as sections 10 and 11, respectively, and the following new section is inserted after section 8:

"**Sec. 9.** In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47 (a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.". (90 Stat 2775)

TITLE V—RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

Sec. 501. (a) [Grants of rights-of-way.]—The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b) [Disclosure of plans—Terms and conditions.]—(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where

applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate. (90 Stat. 2776; 43 U.S.C. § 1761)

NOTE OF OPINION

1. "Public lands"

The Bonneville Power Administration was not required to obtain a right-or-way from the Bureau of Land Management for a transmission line crossing privately held lands in which the United States has retained mineral rights, as such lands are not "public lands" and therefore not subject to the right-of-way requirements of the Federal Land Policy and Management Act. *Columbia Basin Land Protection Association v. Schlesinger*, 643 F. 2d 585, 601-02 (9th Cir. 1981), affirming *Columbia Basin Land Protection Association v. Kleppe*, 417 F. Supp. 46 (E.D. Wash. 1976).

COST-SHARE ROAD AUTHORIZATION

Sec. 502. (a) [Construction of roads for timber removal.]—The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further*, That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) [Recording interests in land.]—Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) [Maintenance of facilities.]—The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

(d) [Delayed payments.]—Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor. (90 Stat. 2777; 43 U.S.C. § 1762)

RIGHT-OF-WAY CORRIDORS

Sec. 503. [Compatible uses—Plans—Rules and regulations.]—In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review. (90 Stat. 2778; 43 U.S.C. § 1763)

GENERAL PROVISIONS

Sec. 504. (a) [Boundaries of rights-of-way.]—The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) [Limitation of term.]—Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) [Right-of-way subject to terms and conditions.]—Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, consistent with the provisions of this title or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) [Plan submittal.]—The Secretary concerned prior to granting or issuing a right-or-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 505 of this Act.

(e) [Regulations.]—The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title.

(f) [Mineral and vegetative materials.]—Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(g) [Annual payment at fair market value.]—The holder of a right-of-way shall pay annually in advance the fair market value thereof as deter-

mined by the Secretary granting, issuing, or renewing such right-of-way: *Provided,* That when the annual rental is less than $100, the Secretary concerned may require advance payment for more than one year at a time: *Provided further,* That the Secretary concerned may waive rentals where a right-of-way is granted, issued, or renewed in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser change, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended.

(h) [Damages.]—(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) [Bonds.]—Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) [Technical and financial capability.]—The Secretary concerned shall grant, issue, or renew a right-of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title. (90 Stat. 2778; 43 U.S.C. § 1764)

TERMS AND CONDITIONS

Sec. 505. Each right-of-way shall contain—

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto. (90 Stat. 2780; 43 U.S.C. § 1765)

NOTES OF OPINIONS

1. Compliance with State laws

The Bonneville Power Administration is not required by section 505(a)(iv) of the Federal Land Policy and Management Act of 1976 to obtain a state certificate of environmental compatibility under the Montana Major Facility Siting Act before constructing the Colstrip transmission lines. *County of Missoula v. Johnson*, CV No. 81-35-BU (D. Mont. Jan. 28, 1982), 13 ELR 20382, aff'd mem., 716 F.2d (9th Cir. 1983)

In constructing the Miles City/New Underwood transmission line, the Western Area Power Administration is not required by section 505 of the Federal Land Policy and Management Act or by section 103 of the Department of Energy Organization Act to obtain a permit from the State of South Dakota. *Citizens and Landowners Against the Miles City/New Underwood Powerline*, 683 F.2d 1171 (8th Cir. 1982), affirming 513 F. Supp 257 (D. S. Dak. 1981)

Compliance with "state substantive standards" in the construction of the Bonneville Power Administration's (BPA) Colstrip transmission line does not require that BPA comply with the application and decision-making process required for actual certification under the Montana Major Facility Siting Act, as this would again place the veto power of the entire project in a state board; but it does require that BPA submit certain information to the state so that the state may make a decision upon whether the state's substantive stan-

dards have been complied with. *State of Montana v. Johnson*, U.S.D.C., D. Montana, CV-81-26-BU, March 4, 1982, at 4-6. [Editor's note: This decision was modified on appeal, 738 F.2d. 1074 (9th Cir. 1984).]

Section 505(a)(iv) of the Federal Land Policy and Management Act means that the Bonneville Power Administration (BPA) must comply with the substantive standards of the State of Washington Energy Facility Siting Act with regard to the Lower Monumental-Ashe transmission line, but it does not have to obtain a certificate from the Governor, nor is it required to comply with the terms of the Franklin County Comprehensive Plan. BPA should, however, supply to the state the information required in Chapter 463-42 WAC of the Washington Siting Act to help the state to enforce its standards. *Columbia Basin Land Protection Association v. Schlesinger*, 643 F.2d 585, 602-06 (9th Cir. 1981), affirming *Columbia Basin Land Protection Association v. Kleppe*, 417 F. Supp. 46 (E.D. Wash. 1976).

SUSPENSION OR TERMINATION OF RIGHTS-OF-WAY

Sec. 506. Abandonment of a right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and, and with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5 of the United States Code, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way. (90 Stat. 2780; 43 U.S.C. § 1766)

RIGHTS-OF-WAY FOR FEDERAL AGENCIES

Sec. 507. (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.

(b)Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency. (90 Stat. 2781; 43 U.S.C. § 1767)

NOTES OF OPINIONS

Applicability 1
Construction with other laws 2

1. Applicability

The Bonneville Power Administration is not required to obtain a right-of-way under the Federal Land Policy and Management Act from the Bureau of Reclamation (BR) for a transmission line crossing lands administered by BR, because section 507 of FLPMA applies only to lands administered by the Bureau of Land Management and to national forest lands. *Columbia Basin Land Protection Association v. Schlesinger*, 643 F.2d 585, 606–08 (9th Cir. 1981), reversing *Columbia Basin Land Protection Association v. Kleppe*, 417 F. Supp. 46 (E.D. Wash. 1976)

2. Construction with other laws

Although the Federal Land Policy and Management Act of 1976 did not repeal the Fact Finders' Act of 1924, the 1976 Act is the latest expression of Congressional intent and should be used as the authority for grants of rights-of-way to the Bureau of Reclamation for project purposes and facilities on lands in the National Forest System and lands administered by the Bureau of Land Management, whether those lands are withdrawn for reclamation purposes or not. The Fact Finders' Act can still be used as authority to reserve rights-of-way on public lands withdrawn for Reclamation purposes and administered by the Bureau of Reclamation for project purposes. Memorandum of Associate Solicitor Leshy to Commissioner of Reclamation, June 26, 1979.

CONVEYANCE OF LANDS

Sec. 508. [Conveyance of Federal lands covered by right-of-way.]—If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C.185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents. (90 Stat. 2781; 43 U.S.C. § 1768)

EXISTING RIGHTS-OF-WAY

Sec. 509. (a) [Existing rights-of-way unaffected.]—Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the

holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

(b) [Railroad right-of-way.]—When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realinement of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the portion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all appplications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this title. (90 Stat. 2781; 43 U.S.C. § 1769)

EFFECT ON OTHER LAWS

Sec. 510. (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title: *Provided*, That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501(b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c)(1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October

15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894. (90 Stat. 2782; 43 U.S.C. § 1770)

COORDINATION OF APPLICATIONS

Sec. 511. Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency. (90 Stat. 2782; 43 U.S.C. § 1771)

TITLE VI—DESIGNATED MANAGEMENT AREAS

CALIFORNIA DESERT CONSERVATION AREA

Sec. 601. (a) [California desert.]—The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plant to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) [Purpose.]—It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the

California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

(c) [Definition of California desert.]—(1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert Conservation Area—Proposed" dated April 1974, and described as provided in subsection (c)(2).

(2) As soon as practicable after the date of approval of this Act, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) [Long-range plan of public land use in California.]—The Secretary, in accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

(e) [Interim program.]—During the period beginning on the date of approval of this Act and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

(f) [Mining laws.]—Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

(g) [California Desert Conservation Area Advisory Committee establishment.]—(1) The Secretary, within sixty days after the date of approval of this Act, shall establish a California Desert Conservation Area Advisory

Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 309 of this Act.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(h) [Management of lands.]—The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands.

(i) [Report to Congress.]—The Secretary shall report to the Congress no later than two years after the date of approval of this Act, and annually thereafter, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary, to remedy such problems.

(j) [Appropriation authorization.]—

* * * * *

(90 Stat. 2782; 43 U.S.C. § 1781)

KING RANGE

Sec. 602. [King Range National Conservation Area.]—Section 9 of the Act of October 21, 1970 (84 Stat. 1067), is amended by adding a new subsection (c), as follows:

"(c) In addition to the lands described in subsection (a) of this section, the land identified as the Punta Gorda Addition and the Southern Additions on the map entitled 'King Range National Conservation Area Boundary Map No. 2, dated July 29, 1975, is included in the survey and investigation area referred to in the first section of this Act.". (90 Stat. 2784.)

BUREAU OF LAND MANAGEMENT WILDERNESS STUDY

Sec. 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: *Provided,* That prior to any rec-

ommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present in such areas: *Provided further*, That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of this Act: *Provided*, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants. (90 Stat. 2785; 43 U.S.C. § 1782)

TITLE VII—EFFECT ON EXISTING RIGHTS; REPEAL OF EXISTING LAWS; SEVERABILITY

EFFECT ON EXISTING RIGHTS

Sec. 701. (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a–1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the Act of May 23, 1908 (35 Stat. 260, as amended; 16 U.S.C. 500), under the Act of March 4, 1913 (37 Stat. 843, as amended; 16 U.S.C. 501), and under the Act of June 20, 1910 (36 Stat. 557). (90 Stat. 2786; 43 U.S.C. §1701 note)

REPEAL OF LAWS RELATING TO HOMESTEADING AND SMALL TRACTS

Sec. 702. Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed except the effective date shall be on and after the tenth anniversary of the date of approval of this Act insofar as the listed homestead laws apply to public lands in Alaska:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads:				
Revised Statute 2289				161,171.
Mar. 3, 1891	561	5	26: 1097	161,162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 218.
May 14, 1880	89		21: 141	166, 185, 202, 223.
June 6, 1900	821		31: 683	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1193	
Oct. 17, 1914	325		38: 740	168.
Revised Statute 2297				169.
Mar. 31, 1881	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26: 1097	
Mar. 3, 1905	1424		36: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
Mar. 17, 1900	479	1	31: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 957	
Sept. 13, 1918	173		40: 960	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 434	186.
Jan. 21, 1922	32		42: 358	
Dec. 28, 1922	19		42: 1067	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 081	187.
June 21, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 270	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884	180	Only last paragraph of sec. 1	23: 96	190.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 48, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	203.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26: 391	212.

The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act:"

Mar. 3, 1891	561	17	26: 1101	

The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."

Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1950	521		64: 398	
Mar. 2, 1889	381	6	25: 854	214.
Feb. 20, 1917	98		39: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35: 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1163	
July 3, 1916	220		39: 344	
Feb. 11, 1913	39		37: 666	218, 219.
June 17, 1910	298		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	440		39: 724	
Aug. 10, 1917	52	10	40: 275	
Mar. 4, 1915	150	1	38: 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	224.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	220	7	35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	21		40: 1153	
July 3, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42: 491	233, 272, 273.
Mar. 2, 1889	381	3	25: 854	234.
Dec. 29, 1894	14		28: 599	
July 1, 1879	63	1	21: 48	235.
Dec. 20, 1917	6		40: 430	236.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
July 24, 1919	126	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	69		47: 59	237a.
May 21, 1934	320		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	560		49: 659	237d.
Mar. 31, 1938	57		52: 149	
Apr. 20, 1936	239		49: 1235	237e.
July 30, 1956	778	1, 2, 4	70: 715	237f,g,h.
Mar. 1, 1921	102		41: 1202	238.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	458		30: 473	240.
Aug. 29, 1916	420		39: 671	
Apr. 7, 1930	108		46: 144	243.
Mar. 3, 1933	198		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.
Revised Statute 2294				254.
May 26, 1890	355		26: 121	
Mar. 11, 1902	182		32: 63	
Mar. 4, 1904	394		33: 59	
Feb. 23, 1923	105		42: 1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 16, 1933	99		48: 274	
June 26, 1935	419		49: 504	
June 16, 1937	361		50: 303	
Aug. 27, 1935	770		49: 909	256b.
Sept. 30, 1890	J. Res. 59		26: 684	261.
June 16, 1880	244		21: 287	263.
Apr. 18, 1904	25		33: 589	
Revised Statute 2304				271.
Mar. 1, 1901	674		31: 847	271, 272.
Revised Statute 2305				272.
Feb. 25, 1919	37		40: 1161	272a.
Dec. 28, 1922	19		42: 1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27: 593	275.

The following words only: "And provided further: That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land: but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

Aug. 18, 1894	301	Only last paragraph of section headed "Surveying the Public Lands."	28: 397	276.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42: 990	
Sept. 27, 1944	421		58: 747	279-283.
June 25, 1946	474		60: 308	279.
May 31, 1947	88		61: 123	279, 280, 282.
June 18, 1954	306		68: 253	279, 282.
June 3, 1948	399		62: 305	283, 284.
Dec. 29, 1916	9	1-8	39: 862	291-298.
Feb. 28, 1931	328		46: 1454	291.
June 9, 1933	53		48: 119	291.
June 6, 1924	274		46: 469	292.
Oct. 25, 1918	195		40: 1016	293.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302.
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.
2. Small tracts:				
June 1, 1938	317		52: 609	682a–e.
June 8, 1954	270		68: 239	
July 14, 1945	298		59: 467	

(90 Stat. 2787)

REPEAL OF LAWS RELATED TO DISPOSAL

Sec. 703. (a) Effective on and after the tenth anniversary of the date of approval of this Act, the statutes and parts of statutes listed below as "Alaska Settlement Laws", and effective on and after the date of approval of this Act, the remainder of the following statutes and parts of statutes are hereby repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Sale and Disposal Laws:				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30: 418	675.
Revised Statute 2365				676.
Revised Statute 2357				678.
June 15, 1880	227	3, 4	21: 238	679–680.
Mar. 2, 1889	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2366				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1926	353	The 2 provisos only	44: 591	
Revised Statute 2375				698.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25: 854	700.
2. Townsite Reservation and Sale:				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 392	725-727.
Mar. 3, 1891	561	16	26: 1101	728.
July 9, 1914	138		38: 454	730.
Feb. 9, 1903	531		32: 820	731.
3. Drainage Under State Laws:				
May 20, 1908	181	1-7	35: 171	1021-1027.
Mar. 3, 1919	113		40: 1321	1028.
May 1, 1958	P.L. 85-387		72: 99	1029-1034.
Jan. 17, 1920	47		41: 392	1041-1048.
4.Abandonded Military Reservation:				
July 5, 1884	214	5	23: 104	1074.
Aug. 21, 1916	361		38: 518	1075.
Mar. 3, 1893	208		27: 593	1076.
The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314		23: 491	1077, 1078.
Feb. 11, 1903	543		32: 822	1079.
Feb. 15, 1895	92		28: 664	1080, 1077.
Apr. 23, 1904	1496		33: 306	1081.
5. Public Lands; Oklahoma:				
May 2, 1890	182	Last paragraph of sec. 18 and secs. 20, 21,22, 24, 27	26: 90	1091-1094, 1096, 1097.
Mar. 3, 1891	543	16	26: 1026	1098.
Aug. 7, 1946	772	1, 2	60: 872	1100-1101.
Aug. 3, 1955	498	1-8	69: 445	1102-1102g.
May 14, 1890	207		26: 109	1111-1117.
Sept. 1, 1893	J. Res. 4		28: 11	1118.
May 11, 1896	168	1, 2	29: 116	1119.
Jan. 18, 1897	62	1-3, 5, 7	29: 490	1131-1134.
June 23, 1897	8		30: 105	
Mar. 1, 1899	328		30: 966	
6. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1895	133		28: 687	
June 27, 1906	3554		34: 517	
Mar. 28, 1912	67		37: 77	
Mar. 9, 1928	164		45: 253	
June 28, 1934	865	14	48: 1274	
July 30, 1947	383		61: 630	
Apr. 24, 1928	428		45: 457	1171a.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
May 23, 1930	313		46: 377	1171b.
Feb. 4, 1919	13		40: 1055	1172.
May 10, 1920	178		41: 595	1173.
Aug. 11, 1921	62		42: 159	1175.
May 19, 1926	337		44: 566	1176.
Feb. 14, 1931	170		46: 1105	1177.
7. Alaska Special Laws:				
Mar. 3, 1891	561	11	26: 1099	732.
May 25, 1926	379		44: 629	733–736.
May 29, 1963	P.L. 88–34		77: 52	
July 24, 1947	305		61: 414	738.
Aug. 17, 1961	P.L. 87–147		75: 384	270–13.
Oct. 3, 1962	P.L. 87–742		76: 740	
July 19, 1963	P.L. 86–66		77: 80	687b–5.
May 14, 1898	299	1	30: 409	270.
Mar. 3, 1903	1002		32: 1028	
Apr. 29, 1950	137	1	64: 94	
Aug. 3, 1955	496		69: 444	270, 687a–2.
Apr. 29, 1950	137	2–5	64: 95	270–5, 260–6, 270–7, 687a–1.
July 11, 1956	571	2	70: 529	270–7.
July 8, 1916	228		39: 352	270–8, 270–9.
June 28, 1918	110		40: 632	270–10, 270–14.
July 11, 1956	571	1	70: 528	
8. Alaska Settlement Laws:				
Mar. 8, 1922	96	1	42: 415	270–11.
Aug. 23, 1958	P.L. 85–725	1, 4	72: 730	
Apr. 13, 1926	121		44: 243	270–15.
Apr. 29, 1950	134	3	64: 93	270–16, 270-17.
May 14, 1898	299	10	30: 413	270–4, 687a to 687a–5.
Mar. 3, 1927	323		44: 1364	
May 26, 1934	357		48: 809	
Aug. 23, 1958	P.L. 85–725	3	72: 730	
Mar. 3, 1891	561	13	26: 1100	687a–6.
Aug. 30, 1949	521		63:679	687b to 687b–4.
9. Pittman Underground Water Act:				
Sept. 22, 1922	400		42: 1012	356.

(c) Effective on and after the tenth anniversary of the date of approval of this Act, section 2 of the Act of March 8, 1922 (42 Stat. 415, 416), as amended by section 2 of the Act of August 23, 1958 (72 Stat. 730), is further amended to read:

"The coal, oil, or gas deposits reserved to the United States in accordance with the Act of March 8, 1922 (42 Stat. 415; 43 U.S.C. 270–11 et seq.), as added to by the Act of August 17, 1961 (75 Stat. 384; 43 U.S.C. 270–13), and amended by the Act of October 3, 1962 (76 Stat. 740; 43 U.S.C. 270–13), shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits or coal, oil, or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented under the Act of March 8, 1922, as amended, and in accordance

with the provisions hereof, for the purpose of prospecting for coal, oil, or gas therein, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil, or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove oil and gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided,* That the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further,* That nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase.".

(d) Section 3 of the Act of August 30,1949 (63 Stat. 679; 43 U.S.C. 687b et seq.), is amended to read:

"Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospects for, mines, or removes any minerals from any land disposed of under the Act of August 30, 1949 (63 Stat. 679), shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949.". (90 Stat. 2789)

REPEAL OF WITHDRAWAL LAWS

Sec. 704. (a) Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (U.S. v. Midwest Oil Co., 236 U.S. 459) and the following statutes and parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Oct. 2, 1888	1069		25: 527	662.
Only the following portion under the section headed U.S. Geological Survey: The last sentence of the paragraph relating to investigation of irrigable lands in the arid region, including the proviso at the end thereof.				
Mar. 3, 1891	561	24	26: 1103	16 U.S.C. 471.
Mar. 1, 1893	183	21	27: 510	33 U.S.C. 681.
Aug. 18, 1894	301	4	28: 422	641.
Only that portion of the first sentence of the second paragraph beginning with "and the Secretary of the Interior" and ending with "shall not be approved."				
May 14, 1898	299	10	30: 413	687a–4.
Only the fifth proviso of the first paragraph.				
June 17, 1902	1093	3	32: 388	416.
Only that portion of section three preceding the first proviso.				
Apr. 16, 1906	1631	1	34: 116	561.
Only the words "withdraw from public entry any lands needed for townsite purposes", and also after the word "case", the word "and".				

Act of	Chapter	Section	Statute at Large	43 U.S. Code
June 27, 1906	3559	4	34: 520	561.
Only the words "withdraw and".				
Mar. 15, 1910	96		36: 237	643.
June 25, 1910	421	1, 2	36: 847	141, 142, 16 U.S.C. 471(a).
All except the second and third provisos.				
June 25, 1910	431	13	36: 858	148.
Mar 12, 1914	37	1	38: 305	975b.
Only that portion which authorizes the President to withdraw, locate, and dispose of lands for townsites.				
Oct. 5, 1914	316	1	38: 727	569(a).
June 9, 1916	137	2	39: 219	
Under "Class One," only the words "withdrawal and."				
Dec. 29, 1916	9	10	39: 865	300.
June 7, 1924	348	9	43: 655	16 U.S.C. 471.
Aug. 19, 1935	561	"Sec. 4"	49: 661	22 U.S.C. 277c.
In "Sec. 4", only paragraph "c" except the proviso thereof.				
Mar. 3, 1927	299	4	44: 1347	25 U.S.C. 398d.
Only the proviso thereof.				
May 24, 1928	729	4	45: 729	49 U.S.C. 214.
Dec. 21, 1928	42	9	45: 1063	617h.
Mar. 6, 1946	58		69: 36	617h.
First sentence only.				
June 16, 1934	557	"Sec. 40(a)"	48: 977	30 U.S.C. 229a.
The proviso only.				
May 1, 1936	254	2	49: 1250	
May 31, 1938	304		52: 593	25 U.S.C. 497.
July 20, 1939	334		53: 1071	16 U.S.C. 471b.
May 28, 1940	220	1	54: 224	16 U.S.C. 552a.
All except the second proviso.				
Apr. 11, 1956	203	8	70: 110	620g.
Only the words "and to withdraw public lands from entry or other disposition under the public land laws."				
Aug. 10, 1956	Chapter 949	9772	70A: 588	10 U.S.C. 4472, 9772,
Aug. 16, 1952	P.L. 87-590	4	76: 389	616c.
Only the words "and to withdraw public lands from entry or other disposition under the public land laws."				

(b) The second sentence of the Act of March 6, 1946 (60 Stat. 36; 43 U.S.C. 617(h)), is amended by deleting "Thereafter, at the direction of the Secretary of the Interior, such lands" and by substituting therefor the following: "Lands found to be practicable of irrigation and reclamation by irrigation works and withdrawn under the Act of March 6, 1946 (43 U.S.C. 617(h))". (90 Stat. 2792; 43 U.S.C. § 617(h))

REPEAL OF LAW RELATING TO ADMINISTRATION OF PUBLIC LANDS

Sec. 705. (a) Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Mar. 2, 1895	174		28: 744	176.
2. June 28, 1934	865	8	48: 1272	315g.
June 26, 1936	842	3	49: 1976, title I	

Act of	Chapter	Section	Statute at Large	43 U.S. Code
June 19, 1948	548	1	62: 533	
July 9, 1962	P.L. 87–524		76: 140	315g–1.
3. Aug. 24, 1937	744		50: 748	315p.
4. Mar. 3, 1909	271	2d proviso only.	35: 845	772.
June 25, 1910	J. Res. 40		36: 884	
5. June 21, 1934	689		48: 1185	871a.
6. Revised Statute 2447				1151.
Revised Statute 2448				1152.
7. June 6, 1874	223		18: 62	1153; 1154.
8. Jan. 28, 1879	30		20: 274	1155.
9. May 30, 1894	87		28: 84	1156.
10. Revised Statute 2471				1191.
Revised Statute 2472				1192.
Revised Statute 2473				1193.
11. July 14, 1960	P.L. 86–649	101–202(a), 203–204(a), 301–303	74: 506	1361, 1362, 1363–1383.
12. Sept. 26, 1970	P.L. 91–429		84: 885	1362a.
13. July 31, 1939	401	1, 2	53: 1144	

(90 Stat. 2792)

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

Sec. 706. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statutes 2339				661.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose 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 damages shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340				661.
The following words only: ", or rights to ditches and reservoirs used in connection with such water rights,"				
Feb. 26, 1897	335		29: 599	664.
Mar. 3, 1889	4. 7		30: 1233	665, 958, (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoirs site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875	152		18: 482	934–939.
May 14, 1898	299	2–9	30: 409	942–1 to 942–9.
Feb. 27, 1901	614		31: 815	943.
June 26, 1906	3548		34: 481	944.
Mar. 3, 1891	561	18–21	26: 1101	946–949.
Mar. 4, 1917	184	1	39: 1197	
May 28, 1926	409		44: 668	
Mar. 1, 1921	93		41: 1194	950.
Jan. 13, 1897	11		20: 484	952–955.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3, 1923	219		42: 1437	
Jan. 21, 1895	37		28: 635	951, 956, 957.
May 14, 1896	179		29: 120	
May 11, 1898	292		30: 404	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	951 (16 U.S.C. 5, 420, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962–965.
Apr. 12, 1910	155		36: 296	966–970.
June 4, 1897	2	1	30: 35	16 U.S.C. 551.
Only the eleventh paragraph under Surveying the public lands.				
July 22, 1937	517	31, 32	50: 525	7 U.S.C. 1010–1012.
Sept. 3, 1954	1255	1	68: 1146	931c.
July 7, 1960	Public Law 86–608		74: 363	40 U.S.C. 345c.
Oct. 23, 1962	Public Law 87–852	1-3	76: 1129	40 U.S.C. 319–319c.
Feb. 1, 1905	288	4	33: 628	16 U.S.C. 524

(b) Nothing in section 706 (a), except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010-1212); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 931c). (90 Stat. 2793; 43 U.S.C. §1701 note)

SEVERABILITY

Sec. 707. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby. (90 Stat. 2794; 43 U.S.C. § 1701 note)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to the programs and activities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

Legislative History. S. 507, Public Law 94-579 in the 94th Congress. Reported from Interior and Insular Affairs; S. Rept. No. 94-583. Passed Senate February 25, 1976. H.R. 13777 reported from Interior and Insular Affairs; H. R. Rept. No. 94-1163. S. 507 passed House, amended, in lieu of H.R. 13777, July 22, 1976. Conference report H.R. Rept. No. 94-1724. House agrees to conference report September 20, 1976. Senate agrees to conference report October 1, 1976.

WATER RESOURCES DEVELOPMENT ACT OF 1976

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. (Act of October 22, 1976, Public Law 94–587, 90 Stat. 2918)

* * * * *

Sec. 120. [Contracting for increased law enforcement services at Army projects authorized.]—(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resources development projects under the jurisdiction of the Secretary of the Army to meet needs during peak visitation periods. (90 Stat. 2924; 42 U.S.C. § 1962a–5d)

* * * * *

Sec. 143. [American Samoa—Cooperative study of water and related land resources authorized.]—The Secretary of the Army, acting through the Chief of Engineers, is hereby authorized and directed to make a study in cooperation with the government of the Territory of American Samoa with particular reference to providing a plan for the development, utilization, and conservation of water and related land resources. Such study shall include appropriate consideration of the needs for flood protection, wise use of flood plain lands, navigation facilities, hydroelectric power generation, regional water supply and waste water management facilities systems, general recreation facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife, and other measures for environmental enhancement, economic and human resources development, and shall be compatible with comprehensive development plans formulated by local planning agencies and other interested Federal agencies. (90 Stat. 2930)

* * * * *

Sec. 193. [High Plains water resources study authorized—Secretary of Commerce to submit interim and final reports to Congress.]—In order to assure an adequate supply of food to the Nation and to promote the economic vitality of the High Plains Region, the Secretary of Commerce (hereinafter referred to in this section as the "Secretary"), acting through the Economic Development Administration, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and appropriate Federal, State, and local agencies, and the private sector, is authorized and

directed to study the depletion of the natural resources of those regions of the States of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska presently utilizing the declining water resources of the Ogallala acquifer, and to develop plans to increase water supplies in the area and report thereon to Congress, together with any recommendations for further congressional action. In formulating these plans, the Secretary is directed to consider all past and ongoing studies, plans, and work on depleted water resources in the region, and to examine the feasibility of various alternatives to provide adequate water supplies in the area including, but not limited to, the transfer of water from adjacent areas, such portion to be conducted by the Chief of Engineers to assure the continued economic growth and vitality of the region. The Secretary shall report on the costs of reasonably available options, the benefits of various options, and the costs of inaction. If water transfer is found to be a part of a reasonable solution, the Secretary, as part of his study, shall include a recommended plan for allocating and distributing water in an equitable fashion, taking into account existing water rights and the needs for future growth of all affected areas. An interim report, with recommendations, shall be transmitted to the Congress no later than October 1, 1978, and a final report, with recommendations, shall be transmitted to Congress not later than July 1, 1980. A sum of $6,000,000 is authorized to be appropriated for the purposes of carrying out this section. (90 Stat. 2943; 42 U.S.C. § 1962d–18)

Sec. 194. [Cochiti Reservoir project, New Mexico.]—The project for the Cochiti Reservoir in New Mexico as part of the project for the improvement of the Rio Grande Basin, authorized in the Flood Control Act of 1960 (74 Stat. 488), is modified in order to direct the Secretary of the Army, acting through the Chief of Engineers, to construct, for public recreation purposes, an access road from United States highway numbered 55 to such reservoir. There is authorized to be appropriated not to exceed $1,500,000 to carry out the purposes of this section. (90 Stat. 2943)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Flood Control Act of 1960 (Public Law 86–645, 74 Stat. 480), including the provision thereof referred to in the text, appear in Volume III at page 1544.

* * * * *

Sec. 201. (a) [Salisbury Ridge transmission line relocation.]—Section 204(b) of the Act of October 23, 1962 (76 Stat. 1173, 1174), is amended by striking the period at the end of the second sentence and insert the following: ": *Provided*, That the Secretary of the Interior in determining reimbursable costs, shall not include the costs of replacing and relocating the original Salisbury Ridge section of the 138-kilovolt transmission line: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, shall relocate such transmission lines, at an estimated cost of $5,641,000".

(b) [Snettisham project, Crater-Long Lakes division, modified.]—The Crater-Long Lakes division of the Snettisham project near Juneau, Alaska, as authorized by section 204 of the Flood Control Act of 1962, is modified with respect to the reimbursement payments to the United States on such project in order to provide (1) that the repayment period shall be sixty years, (2) that the first annual payment shall be 0.1 per centum of the total principal amount to be repaid, (3) thereafter annual payments shall be increased by 0.1 per centum of such total each year until the tenth year at which time the payment shall be 1 per centum of such total, and (4) subsequent annual payments for the remaining fifty years of the sixty-year repayment period shall be one-fiftieth of the balance remaining after the tenth annual payment (including interest over such sixty-year period). (90 Stat. 2944)

* * * * *

EXPLANATORY NOTE

Reference in the Text. Section 204 of the Flood Control Act of 1962 (Act of October 23, 1962, 76 Stat. 1173) amended by subsection (a) and referred to in subsection (b) of the text, appears in Volume III at page 1704.

Sec. 203. (a) [Alaska Hydroelectric Power Development Act—Congressional findings.]—(1) The Congress finds that the expeditious development of hydroelectric power generating facilities in Alaska that are environmentally sound to assist the Nation in meeting existing and future energy demands is in the national interest.

(2) The Congress therefore declares that the expertise of the Chief of Engineers can and should be utilized for the benefit of local public bodies in the development of projects which yield 90 per centum or more of the benefits of the project are attributable to hydroelectric power generation when the project is fully operational.

(b) [Establishment of Alaska Hydroelectric Power Development Fund.]—To meet the goals of this section, there is hereby established in the Treasury of the United States an Alaska Hydroelectric Power Development Fund (hereafter referred to as the "fund") to be and remain available for use by the Secretary of the Army (hereinafter referred to as the "Secretary") to make expenditures authorized by this section. The fund shall consist of (1) all receipts and collections by the Secretary of repayments in accordance with subsection (e) of this section and payments by non-Federal public authorities to the Secretary to finance the cost of construction of projects in accordance with subsection (f) of this section, and which the Secretary is hereby directed to deposit in the fund as they are received, and (2) any appropriations made by the Congress to the fund.

(c) [Authorization of Appropriations.]—There is authorized to be appropriated to the Secretary for deposit in the fund established by subsection (b) of this section the sum of $25,000,000.

(d) [Investment of moneys in Fund.]—(1)If the Secretary determines that moneys in the fund are in excess of current needs, he may request the

investment of such amounts as he deems advisable by the Secretary of the Treasury in direct, general obligations of, or obligations guaranteed as to both principal and interest by, the United States.

(2) With the approval of the Secretary of the Treasury, the Secretary may deposit moneys of the fund in any Federal Reserve bank or other depository for funds of the United States, or in such other banks and financial institutions and under such terms and conditions as the Secretary and the Secretary of the Treasury may mutually agree.

(e) [Expenditures from Fund for phase I projects—Favorable reports to Congress contingent upon repayment of phase I costs.]—The Secretary is authorized to make expenditures from the fund for the phase I design memorandum stage of advanced engineering and design for any project in Alaska that meets the requirements of subsection (a)(2) of this section, if appropriate non-Federal public authorities, approved by the Secretary, agree with the Secretary, in writing, to repay the Secretary for all the separable and joint costs of preparing such design memorandum, if such report is favorable. Following the completion of the phase I design memorandum stage of advanced engineering and design under this subsection, the Secretary shall not transmit any favorable report to Congress prior to being repaid in full by the appropriate non-Federal public authorities for the costs incurred during such phase I. The Secretary is also authorized to make expenditures from non-Federal funds deposited in the fund as an advance against construction costs.

(f) [Expenditures for construction authorized from Fund and payments of non-Federal public authorities.]—In connection with water resources development projects which meet the criteria established by subsection (a)(2) of this section and which are to be constructed by the Secretary, acting through the Chief of Engineers, in accordance with an authorization by Congress and a contract between the non-Federal public authorities and the Secretary, pursuant to subsection (g)(1) of this section occurring on or subsequent to the date of enactment of this Act, the Secretary, acting through the Chief of Engineers, is authorized to construct such projects including activities for engineering and design land acquisition, site development, and off-site improvements necessary for the authorized construction by making expenditures from (1) the Fund established in subsection (b) of this section of funds deposited by non-Federal public authorities as payments for construction and (2) payments of non-Federal public authorities held by the Secretary as payment of construction costs for a project authorized by this section.

(g) [Repayment agreement required prior to initiation of construction—Submission to Congressional committees—U.S. to pay certain costs over those fixed in agreement.]—(1) Prior to initiating any construction work under the authorities of this section, the Secretary and the appropriate non-Federal public authorities shall agree in writing, and submit such agreement to the Committees on Public Works and Appropriations of the Senate and House of Representatives for review and reporting to the Congress for its consideration and approval that the appropriate non-

Federal public authorities will pay the full anticipated costs of constructing the project at the time such costs are incurred, together with normal contingencies and related administrative expenses of the Secretary, and such payments shall be deposited in the fund or held by the Secretary for payment of obligations incurred by the Secretary on an authorized project under this section. The agreement shall provide for an initial determination of feasibility and compliance by the project with law. The total non-Federal obligation shall be paid on or prior to the date the Chief of Engineers has estimated by agreement, that the project concerned will be available for actual generation of all or a substantial portion of the authorized hydroelectric power of the project.

(2) In consideration of the obligations to be assumed by non-Federal public authorities under the provisions of this section and in recognition of the substantial investments which will be made by these authorities in reliance on the program established by this section, the United States shall assume the responsibility for paying for all costs over those fixed in the agreement with the non-Federal public authorities, if such costs are occasioned by acts of God, failure on the part of the Secretary, acting through the Chief of Engineers, to adhere to the agreed schedule of work or a failure of design: *Provided*, That payments by the Secretary of such costs shall be subject to appropriations acts.

(h) [Conveyance of project to non-Federal public authorities upon full repayment—Timing of conveyance.]—The Secretary is authorized and directed, pursuant to the agreement, to convey all title, rights, and interests of the United States to any project, its lands and water area, and appurtenant facilities to the non-Federal public authorities which have agreed to assume ownership of the project and responsibility for its performance, operation, and maintenance, as well as necessary replacements in accordance with this section upon full payment by such non-Federal public authorities as required under subsection (g)(1) of this section. Such conveyance shall, pursuant to the agreement required by subsection (g) of this section, to the maximum extent possible, occur immediately upon the project's availability for generation of all or a substantial portion of the authorized hydroelectric power of the project, and shall include such Federal requirements, reservations, and provisions for access rights to the project and its records as the Secretary finds advisable to complete any portion of project construction remaining at the time of conveyance and to assure that the project will be operated and maintained in a responsible and safe manner to accomplish, as nearly as may be possible, all of the authorized purposes of the project including, but not restricted to, hydroelectric power generation.

(i) [Short title for section 203.]—This section shall be cited as the "Alaska Hydroelectric Power Development Act". (90 Stat. 2946; 42 U.S.C. § 1962d–14a)

* * * * *

Sec. 205. [Short title.]—This Act may be cited as the "Water Resources Development Act of 1976". (90 Stat. 2946)

EXPLANATORY NOTES

Not Codified. Of the extracts from this Act that appear above, sections 143, 194, 201 and 205 are not codified in the U.S. Code.

Legislative History. S. 3823 in the 94th Congress. Reported in Senate from Public Works; S. Rept. No. 94–1255. H.R. 15636 reported in House from Public Works; H.R. Rept. No. 94–1702. Conference report H.R. Rept. No. 94–1755. S. 3823 passed Senate September 28, 1976. Passed House, amended, in lieu of H.R. 15636, September 29, 1976. House and Senate agree to conference report October 1, 1976.

EMERGENCY DROUGHT RELIEF MEASURES

An act to provide temporary authorities to the Secretary of the Interior to facilitate emergency actions to mitigate the impacts of the 1976-77 drought. (Act of April 7, 1977, Public Law 95–18, 91 Stat. 36)

Sec. 1. [Directions to Secretary of the Interior.]—The Secretary of the Interior, hereinafter referred to as the "Secretary", acting through the Bureau of Reclamation and the Bureau of Indian Affairs pursuant to the authorities in the Federal Reclamation Laws (74 Stat. 882, as amended) and other appropriate authorities of the Secretary, and the authorities granted herein, is directed to—

(a) [Studies, construction, management and conservation activities authorized—Construction deadline—Unanticipated and unavoidable circumstances.]—perform studies to identify opportunities to augment, utilize, or conserve water supplies available to Federal reclamation projects and Indian irrigation projects constructed by the Secretary; and consistent with existing contractual arrangements, and State law, and without further authorization, to undertake construction, management and conservation activities which can be expected to have an effect in mitigating losses and damages to Federal reclamation projects and Indian irrigation projects constructed by the Secretary resulting from the 1976-1977 drought period: *Provided*, That construction activities undertaken to implement the programs authorized by this Act shall be completed by January 31, 1978: *Provided further*, That where the Secretary finds that such construction activities have been diligently pursued but cannot be completed by January 31, 1978, due to bad weather, delays in delivery of required supplies, or other unanticipated and unavoidable circumstances, the Secretary is authorized to allow continuation and completion of construction for a reasonable time beyond January 31, 1978;

(b) [Assistance to purchasers of available water—State water laws]—assist willing buyers in their purchase of available water supplies from willing sellers and to redistribute such water to irrigators based upon priorities to be determined by the Secretary within the constraints of State water laws, with the objective of minimizing losses and damages resulting from the drought; and

(c) [Mitigation of effects of recurrence of emergency—Evaluations and reconnaissance studies—Recommendations to President and Congress.]—undertake expedited evaluations and reconnaissance studies of potential facilities to mitigate the effects of a recurrence of the current emergency and make recommendations to the President and to the Congress evaluating such potential undertakings including, but not limited to, wells, pumping plants, pipelines, canals, and alterations of outlet works of existing impoundments. (91 Stat. 36; Act of August 17, 1977, 91 Stat. 870; Act of February 7, 1978, 92 Stat. 10; 43 U.S.C. § 502 note)

EXPLANATORY NOTES

1978 Amendment. The Act of February 7, 1978 (92 Stat. 10) amended subsection (a) by adding the proviso after "January 31, 1978". The 1978 Act does not appear herein.

1977 Amendment. The Act of August 17, 1977 (91 Stat. 870) amended subsection (a) by deleting "November 30, 1977" and inserting in lieu thereof "January 31, 1978". The 1978 Act does not appear herein.

Sec. 2. (a) [Payments for water—No undue benefit or profit.]—Payments for water acquired from willing sellers will be at a negotiated price, but will not confer any undue benefit or profit to any person or persons compared to what would have been realized if the water had been used in the normal irrigation of crops adapted to the area, as determined by the Secretary.

(b) [Price determined by Secretary.]—Purchases of water acquired under subsection (a) above shall be made at a price to be determined by the Secretary: *Provided*, That the selling price shall be sufficient to recover all expenditures made in acquiring the water. (91 Stat. 36; 43 U.S.C. § 502 note)

Sec. 3. (a) [Priority of need for allocations determined by Secretary.]—The Secretary shall determine for purposes of this Act the priority of need for allocating the water, taking into consideration, among other things, State law, national need, and the effect of losing perennial crops due to drought.

(b) [Definition of "irrigators".]—For the purposes of this Act the term "irrigators" shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within Federal reclamation projects and within all irrigation projects constructed by the Secretary for Indians.

(c) [Definition of "Federal reclamation project."]—For the purposes of this Act, the term "Federal reclamation project" means any project constructed or funded under Federal reclamation law and specifically including projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044) as amended. (91 Stat. 36; 43 U.S.C. § 502 note)

EXPLANATORY NOTE

Reference in the Text. The Small Reclamation Projects Act of 1956 (70 Stat. 1044; 43 U.S.C. § 422a et seq.), referred to in the text, appears in Volume II at page 1331.

Sec. 4. [Deferment of 1977 payments owed—Recovery by extension of repayment period.]—The Secretary is hereby authorized to defer without penalty, the 1977 payments of any installment of charges including operation and maintenance costs owed to the United States by irrigators as he deems necessary because of financial hardship caused by extreme drought conditions: *Provided*, That any deferment shall be recovered and such recovery may be accomplished by extending the repayment period under the contracting entities' existing contracts with the United States. (91 Stat. 37; 43 U.S.C. § 502 note)

Sec. 5. [NEPA exemption.]—Actions taken pursuant to this Act are in response to emergency conditions and depend for their effectiveness upon their completion prior to or during the 1977 irrigation season and, there-

fore, are deemed not to be major Federal actions significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (83 Stat. 852, as amended, 42 U.S.C. 4321). (91 Stat. 37; 43 U.S.C. § 502 note)

EXPLANATORY NOTE

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970 83 Stat. 852; 42 U.S.C. § 4321 et seq.), referred to in the text, appears in Volume IV in chronological order.

NOTES OF OPINION

1. NEPA compliance

The Bureau of Reclamation's drawdown of carryover storage at Clair Engle Lake and resultant decrease in releases into the Trinity River is a management activity expected to have an effect in mitigating drought-related losses and damages to the Central Valley Project. As such, the Bureau is specifically exempted from filing an environmental impact statement by section 5 of the Emergency Drought Act, at least until the authority under that Act expires on September 30, 1977. *County of Trinity v. Andrus*, 438 F. Supp. 1368 (E.D. Cal. 1977).

The Bureau of Reclamation's drawdown of carryover storage capacity at Clair Engle Lake to mitigate drought damages does not necessitate the preparation of an environmental impact statement even after the expiration of the Emergency Drought Act's exemption from the filing requirements of § 102 of the National Environmental Policy Act for such activities. Although the latter Act may be applicable, in limited circumstances, to a project initiated before it became effective in 1970, the present action is neither a major incremental stage of project development nor a revision or extension of the original facilities. Rather, an environmental impact statement is not required where, as here, the Bureau is simply operating the Trinity River Division within the range originally available pursuant to the authorizing statute, in response to changing environmental conditions. *County of Trinity v. Andrus*, 438 F. Supp. 1368 (E.D. Cal. 1977).

Sec. 6. [Coordination with other emergency and disaster relief operations.]—The program established by this Act shall, to the extent practicable, be coordinated with emergency and disaster relief operations conducted by other Federal and State agencies under other provisions of law. The Secretary shall consult with the heads of such other Federal and State agencies as he deems necessary. The heads of all other Federal agencies performing relief functions under other Federal authorities are hereby authorized and directed to provide the Secretary, or his designee, such information and records as the Secretary or his designee shall deem necessary for the administration of this Act. (91 Stat. 37; 43 U.S.C. § 502 note)

Sec. 7. [Report to President and Congress.]—Not later than May 1, 1978, the Secretary shall provide the President and the Congress with a complete report on expenditures and accomplishments under this Act. (91 Stat. 37; Act of February 7, 1978, 92 Stat. 10; 43 U.S.C. § 502 note)

EXPLANATORY NOTE

1978 Amendment. The Act of February 7, 1978 (92 Stat. 10) amended section 7 by deleting "March" and substituting in lieu thereof "May". The 1978 Act does not appear herein.

Sec. 8. (a) [Loans to irrigators authorized.]—The Secretary is authorized to make loans to irrigators for the purposes of undertaking construction,

management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from 1976-1977 drought period.

(b) [Loan terms.]—Such loans shall be without interest with the repayment schedule to be determined by the Secretary, but loans for acquiring water under section 2 of this Act shall not exceed five years in duration.

(c) [Termination date of authorities conferred by Act.]—The authorities conferred by this Act shall terminate on November 30, 1977.

(d) [Water conservation and management procedures—Authority to condition grants or waive loan repayment—Report to Congress.]—The Secretary may condition grants, or may waive all or a portion of the repayment of loans made under this Act, upon the agreement of a recipient to undertake a program of water conservation and efficient management meeting standards established by the Secretary. The Secretary shall report to Congress on measures which he has undertaken to institute such conservation and management procedures. (91 Stat. 37; Act of August 17, 1977, 91 Stat. 870; 43 U.S.C. § 502 note)

EXPLANATORY NOTE

1977 Amendment. The Act of August 17, 1977 (91 Stat. 870) amended subsection (c) by deleting "September" and inserting in lieu thereof "November" and by adding subsection (d) as it appears above. The Act does not appear herein.

Sec. 9. [Authorization for appropriations.]—There is authorized to be appropriated $100,000,000 to carry out the provisions of this Act which shall include the construction of emergency physical facilities under terms and conditions applying to expenditures from the emergency fund created by the Act of June 26, 1948 (62 Stat. 1052). (91 Stat. 37; Act of August 17, 1977, 91 Stat. 870; 43 U.S.C. § 502 note)

EXPLANATORY NOTES

1977 Amendment. The Act of August 17, 1977 (91 Stat. 870) amended section 9 by deleting "water purchase and reallocation program authorized by this Act: *Provided*, that 15 per centum of such appropriations shall be available for carrying out other programs authorized by this Act and for" and inserting in lieu thereof "provisions of this Act which shall include the". The 1977 Act does not appear herein.

Reference in the Text. The Act of June 26, 1948 (62 Stat. 1052), referred to in the text, is the Emergency Fund Act. The 1948 Act appears in Volume II at page 891.

Sec. 10. (a) [Availability of funds for small reclamation projects and projects financed with non-Federal funds—Limitations.]—Funds available to the Secretary pursuant to this Act and the Act of June 26, 1948 (62 Stat. 1052), shall be available for expenditure on behalf of (1) projects financed through loans pursuant to the Small Reclamation Projects Act of 1956 (70 Stat. 1044) as amended, and (2) projects financed with non-Federal funds notwithstanding the provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 649, 650), and any other similar provision of law. Expenditures undertaken under this authority shall be governed by the same terms and conditions as apply to programs regularly constructed

under Federal reclamation law: *Provided*, That not more than 15 per centum of such available funds may be used on behalf of nonfederally financed projects and, not more that $1,000,000 may be expended on behalf of any individual contracting entity.

(b) [Availability of funds for State programs—Non-reimbursability.]—Funds available to the Secretary pursuant to this Act and the Act of June 26, 1948 (62 Stat. 1052), shall be available for expenditure for drought emergency programs conducted heretofore or hereafter by State water resource agencies during fiscal year 1977 if such programs are found to be compatible with the broad purposes of this Act. In recognition of the widespread and diffused nature of the benefits deriving from this subsection, all funds expended under the authority of this subsection shall be nonreimbursable.

(c) [Availability of funds for fish and wildlife mitigation—$10 million limit—Non-reimbursability.]—Funds available for expenditure under the provisions of this Act may be used by the Secretary for the purchase of water or for acquisition of entitlement to water from any available source for the purpose of mitigating damage to fish and wildlife resources caused by drought conditions. Not to exceed $10,000,000 may be expended for such activities and any amount so expended shall be nonreimbursable. (91 Stat. 37; Act of August 17, 1977, 91 Stat. 870; 43 U.S.C. § 502 note)

EXPLANATORY NOTES

1977 Amendment. The Act of August 17, 1977 (91 Stat. 870) amended subsections (a) and (b) by deleting "during fiscal year 1977 for expenditure pursuant to the Act of June 26, 1948 (62 Stat. 1052)" and inserting in lieu thereof "pursuant to this Act and the Act of June 26, 1948 (62 Stat. 1052)" and amended subsection (b) further by deleting the proviso at the end of the first sentence, which read: "*Provided*, That not more than 5 per centum of such available funds may be used for purposes of this subsection and not more that $1,000,000 may be expended on behalf of any State". The 1977 Act does not appear herein.

References in the Text. The Small Reclamation Projects Act of 1956 (70 Stat. 1044; 43 U.S.C. § 422a et seq.), referred to in subsection (a) of the text, appears in Volume II at page 1331. Section 46 of the Act of May 25, 1926 (44 Stat. 649, 650, 43 U.S.C. § 423e), the Omnibus Adjustment Act, also referred in subsection (a) of the text, appears in Volume I at page 376.

Reference in the Text. The Act of June 26, 1948 (62 Stat. 1052), referred to in subsections (a) and (b) of the text, is the Emergency Fund Act. The 1948 Act appears in Volume II at page 891.

Sec. 11. [Existing laws, rights, responsibilities, jurisdiction, interests, compacts unaffected.]—Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(a) as affecting in any way any law governing appropriations or use of, or Federal right to, water on public lands;

(b) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(c) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two States and the Federal Government;

(d) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies; and

(e) as modifying the terms of any interstate compact. (91 Stat. 38; 43 U.S.C. § 502 note)

Legislative History. S. 925, Public Law 95–18 in the 95th Congress. Reported in Senate from Energy and Natural Resources March 11, 1977; S. Rept. No 95–50. Passed Senate March 15, 1977. Passed House, amended, April 4, 1977. Senate agrees to House amendment April 4, 1977. Companion bill H.R. 5117 reported in House from Interior and Insular Affairs April 1, 1977; H.R. Rept. No. 95–155. Passed House April 4, 1977.

PUBLIC WORKS EMPLOYMENT ACT OF 1977

[Extracts from] An act to increase the authorization for the Local Public Works Capital Development and Investment Act of 1976. (Act of May 13, 1977, Public Law 95–28, 91 Stat. 116)

* * * * *

Sec. 111. [Initiation of construction of certain federal public works projects—Limitation on use of funds.]—The Secretary of Agriculture and the Secretary of the Interior shall immediately initiate the construction of those Federal public works projects (A) which are the responsibility of their respective departments, (B) which have been authorized, and (C) which can be commenced within 60 days of the date of enactment of this section and completed no later than the 180th day after commencement of construction. No funds authorized by section 111 of the Local Public Works Capital Development and Investment Act of 1976 (Public Law 94–369) may be used to carry out this section. (91 Stat. 120)

TITLE II—FEDERAL PUBLIC WORKS PROJECTS CONTINUATION

Sec. 201. [Congressional findings.]—The Congress hereby finds and declares that:

(A) the construction projects listed in Public Law 94–355, the Public Works for Water and Power Development and Energy Research Appropriations Act, 1977, and in Public Law 94–351, the Agriculture and Related Agencies Programs Appropriations Act, 1977, represent the foundation of our national public works activity. Such projects are essential to the reduction of unemployment;

(B) such projects provide long-term benefits to communities, to States, and to the entire Nation in terms of water management, flood control, navigation, recreation, and enhanced economic activity; and

(C) such projects have been authorized by the Congress after protracted hearings and consideration extended over many years. Appropriations have been made and are being made pursuant thereto. It is the judgment of Congress that such projects should not be discontinued except by following the legislative process provided by the Constitution of the United States and the provisions of Public Law 93–344, the Congressional Budget and Impoundment Control Act of 1974. (91 Stat. 120)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Congressional Budget and Impoundment Control Act of 1974 (Act of July 12, 1974, 88 Stat. 297), referred to in the text, appear in Volume IV in chronological order and in the Appendix in Supplement I at 2 U.S.C. § 621 et seq..

Sec. 202. [Appropriations to be made available not withstanding budget deferal and rescission provisions.]—Notwithstanding the deferral and rescission provisions of Public Law 93–344, all appropriations provided in Public Laws 94–355 and 94–351 for construction projects or for investigation, planning, or design related to construction projects shall be made available for obligation by the President and expended for the purposes for which the appropriations are made, with the exception of those appropriations or expenditures relating to the Meramec Park Lake project in Missouri. (91 Stat. 120)

Sec. 203. [Section 202 the equivalent of resolution disapproving deferral of budget authority and appropriations previously provided and congressional statement of intent not to uphold rescission of such budget authority and appropriations.]—With the exception noted relating to the Meramec Park Lake project in Missouri, section 202 of this Act shall be equivalent to and have the legal effect of a resolution disapproving any deferral of budget authority previously provided for construction projects in Public Law 93–355 or in any prior law appropriating funds for the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation, or for construction projects in Public Law 94–351 or any prior law appropriating funds for construction projects in the Department of Agriculture as provided for in section 1013(b) of Public Law 93–344, the Congressional Budget and Impoundment Control Act of 1974. With the exception noted relating to the Meramec Park Lake project in Missouri, section 202 is also equivalent to a congressional statement of intent not to uphold any rescission of budget authority with regard to funds appropriated for construction projects in Public Law 94–355 or Public Law 94–351 or for construction projects in any prior law appropriating funds for the United States Army Corps of Engineers, the Department of the Interior Bureau of Reclamation, or the Department of Agriculture, as provided for in section 1012(b) of Public Law 93–344. (91 Stat. 121)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Congressional Budget and Impoundment Control Act of 1974 (Act of July 12, 1974, 88 Stat. 297), referred to in the text, including section 1013(b), appear in Volume IV in chronological order.

Sec. 204. [Interest and discount rates.]—It is hereby reiterated that the interest rates or rates of discount to be used to assess the return on the Federal Government's investment in projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation, shall be those interest rates or rates of discount established by Public Law 93–251, the Water Resources Development Act of 1974, or by any prior law authorizing projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation. (91 Stat. 121)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Extracts from the Water Resources Development Act of 1974

(Act of March 7, 1974, 87 Stat. 16), referred to in the text, including section 80, appear in Volume IV in chronological order.

Legislative History. H.R. 11, Public Law 95–28 in the 95th Congress. Reported in House from Public Works and Transportation; H.R. Rept. No. 95–20. S. 427 in 95th Congress. Reported in Senate from Environment and Public Works; S. Rept. No. 95–38. H.R. 11 passed House February 24, 1977. Passed Senate, amended, in lieu of S. 427, March 10, 1977. House concurs in Senate amendment, with amendment, April 5, 1977. Conference reports: H.R. Rept. No. 95–230; S. Rept. No. 95—110. Senate agrees to conference report April 29, 1977. House agrees to conference report May 3, 1977.

SAN LUIS UNIT STUDY

An act to authorize appropriations for continuation of construction of distribution systems and drains on the San Luis Unit, Central Valley project, California, to mandate the extension and review of the project by the Secretary, and for other purposes. (Act of June 15, 1977, Public Law 95–46, 91 Stat. 225)

Sec. 1. San Luis Unit, Central Valley Project, appropriation authorization—Repayment of costs.]—There is hereby authorized to be appropriated for fiscal year 1978, and to be committed for expenditure by the Secretary notwithstanding any other provision of law or contract, the sum of $31,050,000 for continuation of construction of distribution systems and drains on the San Luis Unit, Central Valley Project, California. No funds shall be expended by the Secretary prior to his obtaining a pledge of the Board of Directors of the Westlands Water District, and any other affected districts, indicating their intention to repay costs associated with construction authorized by this Act. (91 Stat. 225)

NOTE OF OPINION

1. Authority to obligate funds

Where the legislative history of the law (Public Law 95–46, 91 Stat. 225) authorizing appropriations in the amount of $31,050,000 for continuation of construction of distribution systems and drains showed that Congress intended to limit the availability of funds so appropriated to fiscal year 1978 and the appropriation act for 1978 (Public Law 95–96, 91 Stat. 797, 801) provided a lump-sum for construction of authorized reclamation projects "as authorized by law," the quoted phrase should be read to require that the $31,050,000 be obligated only in accord with the act authorizing the appropriation, i.e., such funds were to be used only in fiscal year 1978 even though the lump-sum reclamation appropriation for 1978 is generally available until expended. Since these funds were available to be obligated for the San Luis Unit only in fiscal year 1978, subsequent fiscal year obligations were not properly incurred and any future obligation of those funds is unauthorized. Dec. Comp. Gen. B–198221 (July 19, 1982).

Sec. 2. (a) [Task force established.]—The Secretary of the Interior (hereinafter referred to as the"Secretary") shall, within thirty days after enactment of this section, establish a task force to review the management, organization, and operations of the San Luis Unit to determine the extent to which they conform to the purposes and intent of the Act of June 3, 1960 (74 Stat. 156) and the Act of June 17, 1902 (32 Stat. 388). The task force, in conducting its review, shall hold no fewer than three public hearings, at least two of which shall be held within the State of California. Members of said task force shall include, among others, the Commissioner of Reclamation, the Assistant Secretary of the Interior for Land and Water, the Solicitor of the Department of the Interior, the Comptroller General of the United States, or their representatives, members of the general public, representatives of the State of California, and the Westlands Water District. The Secretary shall appoint a task force chairman who shall set

the dates of hearings, meetings, workshops, and other official task force functions in carrying out the purposes of this Act. The Secretary is authorized and directed to finance from funds available to him the reasonable expenses of the task force created by this section. The task force shall dissolve on January 1, 1978.

(b) [Report to the Congress—Topics of study.]—The task force shall submit to the chairmen of the House Committee on Interior and Insular Affairs, and the Senate Committee on Energy and Natural Resources, no later than January 1, 1978, a report on the San Luis Unit, including—

(1) a detailed accounting of funds expended for planning or construction of facilities utilized by landowners within the San Luis Unit, and the specific legislative authority for each feature of the project;

(2) an analysis of the compatibility of the present design and plan of the San Luis Unit with the original feasibility report, environmental impact statement, and cost estimates;

(3) an analysis of existing repayment obligations, including rates and types of repayment, the duration of repayments, and the desirability of maintaining present repayment timetables or of modifying them in order to ensure that an equitable burden of repayment falls on all project beneficiaries;

(4) a review of the contractual commitments for water delivery to water districts of the unit, and the development of new methods for calculating and, on a periodic basis, recalculating, all future water service charges;

(5) the fiscal and future environmental impacts of the completion, under current plans, of the San Luis interceptor drain north of Kesterson Reservoir, and recommendations as to the feasibility of implementing alternative uses of waste water such as reclamation for agricultural or industrial re-use;

(6) a procedure to provide greater public awareness of and participation in the design and review of future water delivery contracts by all potentially affected parties by means of public notice and the opportunity for a public hearing;

(7) the adequacy of present levels of authorization for completing the unit and recommendations for funding such completion, such as indexing of authorization or periodic reauthorization;

(8) the record of enforcement of the requirements concerning the disposition of excess lands by persons receiving Federal water or major project benefits, and the residency requirement of the Act of June 17, 1902 (32 Stat. 388), to the extent required by law, and an evaluation of the success of the project in fostering family farms, including the adequacy of present legislation and departmental rules and regulations pertaining to these provisions;

(9) the impact of the commitment of water from the Sacramento-San Joaquin Delta in excess of that obligated in the existing long-term contract, for delivery to the unit under future contracts;

(10) the fiscal and agricultural impacts of extending the project to encompass federally constructed ground water integration operations. (91 Stat. 225)

EXPLANATORY NOTE

Reference in the Text. The Act of June 3, 1960 (74 Stat. 156), referred to in subsection (a) of the text, authorized construction of the San Luis Unit, CVP. The 1960 Act appears in Volume III at page 1524.

Sec. 3. [No contract to be approved prior to completion of report—Submission of contract to Congress.]—Neither the Secretary nor any of his representatives shall approve any amendatory or other contract modifying the current water service contract of June 5, 1963 (contract numbered 14–06–200–495–A) or the current repayment contract of April 1, 1965 (contract numbered 14–06–200–2020–A), or any temporary contract extending more than one hundred and eighty days beyond December 31, 1977, prior to the completion of the report of the task force required in section 2 or January 1, 1978, whichever occurs first. No such contract shall be approved by the Secretary or his representative prior to its submission to the Congress for a period of not more than ninety day (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a date certain). (91 Stat. 227)

Sec. 4. [Litigation unaffected.]—Nothing in this Act shall affect any litigation initiated prior to the date of enactment. (91 Stat. 227)

EXPLANATORY NOTES

Supplementary Provision. Section 8 of the Reclamation Safety of Dams Act of 1978 (Act of November 2, 1978, Public Law 95–578, 92 Stat. 2471) provides that the Congressional oversight required by section 3 of this Act has been accomplished with respect to the three temporary water service contracts between the United States and the Westlands Water District forwarded to Congress on October 4, 1978. The Reclamation Safety of Dams Act of 1978 appears in Volume IV in chronological order.

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 4390, Public Law 95–46 in the 95th Congress. Reported in House from Interior and Insular Affairs April 29, 1977; H.R. Rept. No. 95–233. Passed House May 2, 1977. Reported in Senate from Energy and Natural Resources May 13, 1977; S. Rept. No. 95–144. Passed Senate, amended, May 24, 1977. House agrees to Senate amendments May 26, 1977.

DEMONSTRATION OF MEMBRANE AND PHASE-CHANGE DESALTING PROCESSES

[Extracts from] an act to extend certain authorities of the Secretary of the Interior with respect to water resources research and saline water conversion programs, and for other purposes. (Act of August 2, 1977, Public Law 95–84, 91 Stat. 400)

[Sec. 1. Authorizations for appropriations during fiscal year 1978 for Water Resources Research Act of 1964 and Saline Water Conversion Act of 1971.]

* * * * *

(c) Expenditures and obligations under any activity authorized by paragraphs (1), (2), and (3) above may be increased by not more than 10 per centum if any such increase is accompanied by a corresponding decrease in expenditures and obligations in one or more activities set forth in subsection (b) above.

(d) Notwithstanding any provision of the Saline Water Conversion Act of 1971 (85 Stat. 162) or any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriations Acts.

(e) All other provisions of the above Acts shall remain unchanged by this Act. (91 Stat. 400)

Sec. 2. [Operation of desalting plants using membrane and phase-change processes—Necessary provisions of reports to Congressional committees prior to expenditure of appropriated Funds—Proposed contract provisions—Appropriation authorization—Agreements in connection with construction and operation]—

(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41

U.S.C. 504 et seq. (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95–224)) with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.".

(b) Funds appropriated pursuant to the authority provided by this section may not be expended until thirty calendar days (excl
ing days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way,

power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act, the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements 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. (91 Stat. 401; Act of October 17, 1978, 92 Stat. 1311; Act of October 15, 1980, 94 Stat. 2034; 42 U.S.C. § 7836)

EXPLANATORY NOTES

Codification. Section 2 was originally codified at 42 U.S.C. § 1959h. After enactment of the Act of October 17, 1978, the provisions of 42 U.S.C. § 1959h, as amended, were recodified at 42 U.S.C. § 7836.

1980 Amendments. Section 3(a) of the Act of October 15, 1980 (Public Law 96-457, 94 Stat. 2032) substituted the present text of subsection (a) for the prior text of the subsection, which had stated:

> The Secretary of the Interior is authorized and directed to study, design, construct, operate, and maintain desalting plants demonstrating the engineering and economic viability of membrane and phase-change desalting processes at not more than five locations in the United States including the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands: *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water.

Section 3(b) of the 1980 Act, amended subsection (b) inserting "how the plant being proposed differs from others, if any, already constructed under this section" after "but is not limited to". It struck out all the text of the subsection after the first three sentences, and inserted in lieu thereof the present final fives sentences of the subsection. The text struck out in the amendment stated:

> Such report shall also be accompanied by a proposed contract between the Secretary and a duly authorized non-Federal public entity, in which such entity shall agree to furnish, at no cost to the United States, necessary water rights, water supplies, rights-of-way, power source interconnections, and brine disposal facilities: *Provided*, That the Secretary may waive the obligation of the non-Federal public entity to furnish brine disposal facilities if he finds that such entity is unable financially to bear the cost of such facilities. Such proposed contract will further provide that the United States will construct the plant described in the report at no cost to the non-Federal public entity and that the United States will provide all costs of operation and maintenance of the plant for a term of at least two but not more than five years, during which access to the plant and its operating data will not be denied to the Secretary or his representative. The Secretary is authorized to include in the proposed contract a provision for conveying all rights, title, and interest of the Federal Government to the non-Federal public entity, subject only to a future right to reenter the facility for the purpose of financing at Federal expense modifications for advanced technology and for its operation and maintenance for a successive term under the same conditions as pertain to the original term.

Subsection 3(c) of the 1980 Act, struck out the prior text of subsection (c) and inserted the present text of the subsection.

Section 3(d) of the 1980 Act, inserted subsection (d).

The 1980 Act does not appear herein. For legislative history of the 1980 Act, see Public Law 96–457 in the 96th Congress; S. Rept. No. 773 on S. 1640; and H.R. Rept. No. 989 on H.R. 5340.

1978 Amendment. Section 205(a) of the Act of October 17, 1978 (Public Law 95-467,

92 Stat. 1305, 1311), amended subsection (a) by substituting "five" for "four" and by striking "Puerto Rico, Virgin Islands, and Guam:" and inserting "The District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands:". Section 205(b) of the 1978 Act amended subsection (b) by adding "*Provided*, That, the Secretary may waive the obligation of the non-Federal entity to furnish brine disposal facilities if he finds that such entity is unable financially to bear the cost of such facilities" to the end of the third full sentence. Extracts from the 1978 Act appear in Volume IV in chronological order.

Supplementary Provision: Promulgation of Rules. Section 411of the Act of October 17, 1978 (Pub. L. 95-467, 92 Stat. 1305, 1317) provides that any rule or regulation promulgated by the Secretary of the Interior affecting the administration of section2 of this Act shall not become effective until 30 days after it has been transmitted to the Speaker of the House of Representatives and the President of the Senate. Extracts from the 1978 Act appear in Volume IV in chronological order.

Legislative History. H.R. 4746, Public Law 95–84 in the 95th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 306. Passed House May 17, 1977. Passed Senate, amended, May 25, 1977, in lieu of S. 849, as passed. Senate and House agreed to conference report, July 20, 1977; H.R. Rept.No. 497. Companion bill, S. 846, reported in Senate from Environment and Public Works; S. Rept. No. 187. Passed Senate May 25, 1977.

DEPARTMENT OF ENERGY ORGANIZATION ACT

[Extracts from] An act to establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes. (Act of August 4, 1977, Public Law 95-91, 91 Stat. 565)

[Sec. 1 Short title.]—This act may be cited as the "Department of Energy Organization Act". (91 Stat. 565; 42 U.S.C. § 7101 note)

TABLE OF CONTENTS

Sec. 2. Definitions.

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

Sec. 101. Findings.
Sec. 102. Purposes.
Sec. 103. Relationship with States.

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

Sec. 201. Establishment.
Sec. 202. Principal officers.
Sec. 203. Assistant Secretaries.
Sec. 204. Federal Energy Regulatory Commission.
Sec. 205. Energy Information Administration.
Sec. 206. Economic Regulatory Administration.
Sec. 207. Comptroller General functions.
Sec. 208. Office of Inspector General.
Sec. 209. Office of Energy Research.
Sec. 210. Leasing Liaison Committee.

TITLE III—TRANSFERS OF FUNCTIONS

Sec. 301. General transfers.
Sec. 302. Transfers from the Department of the Interior.
Sec. 303. Administration of leasing transfers.
Sec. 304. Transfers from the Department of Housing and Urban Development.
Sec. 305. Coordination with the Department of Transportation.
Sec. 306. Transfer from the Interstate Commerce Commission.
Sec. 307. Transfers from the Department of the Navy.
Sec. 308. Transfers from the Department of Commerce.
Sec. 309. Naval reactor and military application programs.
Sec. 310. Transfer to the Department of Transportation.

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

Sec. 401. Appointment and administration.
Sec. 402. Jurisdiction of the Commission.
Sec. 403. Initiation of rulemaking proceedings before Commission.
Sec. 404. Referral of other rulemaking proceedings to Commission.
Sec. 405. Right of Secretary to intervene in Commission procedures.
Sec. 406. Reorganization.
Sec. 407. Access to information.

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

Sec. 501. Procedures.
Sec. 502. Judicial review.
Sec. 503. Remedial orders.
Sec. 504. Requests for adjustments.
Sec. 505. Review and effect.

TITLE VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

Sec. 601 Definitions.
Sec. 602. Divestiture of energy holdings by supervisory officials.
Sec. 603. Disclosure of energy assets.
Sec. 604. Report on prior employment.
Sec. 605. Postemployment prohibitions and reporting requirements.
Sec. 606. Participation prohibitions.
Sec. 607. Procedures applicable to reports.
Sec. 608. Sanctions.

PART B—PERSONNEL PROVISIONS

Sec. 621. Officers and employees.
Sec. 622. Senior positions.
Sec. 623. Experts and consultants.
Sec. 624. Advisory committees.
Sec. 625. Armed services personnel.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

Sec. 641. General authority.
Sec. 642. Delegation.
Sec. 643. Reorganizations.
Sec. 644. Rules.
Sec. 645. Subpena.
Sec. 646. Contracts.
Sec. 647. Acquisition and maintenance of property.
Sec. 648. Facilities construction.
Sec. 649. Use of facilities.
Sec. 650. Field offices.
Sec. 651. Copyrights.
Sec. 652. Gifts and bequests.
Sec. 653. Capital fund.
Sec. 654. Seal of Department.
Sec. 655. Regional energy advisory boards.
Sec. 656. Designation of conservation officers.
Sec. 657. Annual report.
Sec. 658. Leasing report.
Sec. 659. Transfer of funds.
Sec. 660. Authorization of appropriations.

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

Sec. 701. Transfer and allocations of appropriations and personnel.
Sec. 702. Effect on personnel.
Sec. 703. Agency terminations.
Sec. 704. Incidental transfers.
Sec. 705. Savings provisions.

Sec. 706. Separability.
Sec. 707. References.
Sec. 708. Presidential authority.
Sec. 709. Amendments.
Sec. 710. Administrative amendments.
Sec. 711. Transition.
Sec. 712. Civil Service Commission report.
Sec. 713. Environmental impact statements.

TITLE VIII—ENERGY PLANNING

Sec. 801. National energy policy plan.
Sec. 802. Congressional review.

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

Sec. 901. Effective date.
Sec. 902. Interim appointments.

TITLE X—SUNSET PROVISIONS

Sec. 1001. Submission of comprehensive review.
Sec. 1002. Contents of review.

DEFINITIONS

Sec. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this Act (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this Act, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and convenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction. (91 Stat. 567; 42 U.S.C. § 7101)

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

FINDINGS

Sec. 101. The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch. (91 Stat. 567; 42 U.S.C. § 7111)

PURPOSES

Sec. 102. The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act—

(1) to establish a Department of Energy in the executive branch;

(2) to achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions;

(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages;

(4) to create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program;

(5) to carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production, and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies;

(6) to place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources;

(7) to continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department;

(8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve;

(9) to promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost;

(10) to establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President;

(11) to provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs;

(12) to foster and assure competition among parties engaged in the supply of energy and fuels;

(13) to assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety;

(14) to assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act;

(15) to provide for, encourage, and assist public participation in the development and enforcement of national energy programs;

(16) to create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development;

(17) to foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising; and

(18) to provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act. (91 Stat. 567; 42 U.S.C. § 7112)

NOTES OF OPINION

1. Purpose

The trifurcated arrangement of the Secretary of Energy's Delegation Order No. 0204-33 of December 1978 delegating rate

development to the local Power Marketing Administration, rate approval and interim implementation to the Assistant Secretary of Energy, and final approval to the independent Federal Energy Regulatory Commission does as much as possible to resolve the command of section 5 of the Flood Control Act of 1944 that there be an independent check on ratemaking and the command of the Department of Energy Organization Act that ratemaking be made more efficient through the centralization of control in one officer, the Secretary of Energy. *United States v. Tex-La Electric Cooperative, Inc.*, 693 F.2d 392, 411-2 (5th Cir. 1982), reversing *United States v. Tex-La Electric Cooperative, Inc.*, 524 F. Supp. 409 (E.D. La. 1981), and *United States v. Northeast Texas Electric Cooperative, Inc.*, Civil Action No. H-81-604 (S.D. Tex. 1981).

The purpose of the Department of Energy Organization Act is to improve the efficiency of American energy production and unite the scattered governmental divisions with responsibility in the area under the leadership of a single new cabinet-level officer, the Secretary of Energy. *United States v. Tex-La Electric Cooperative, Inc.*, 693 F. 2d 392, 402 (5th Cir. 1982).

RELATIONSHIP WITH STATES

Sec. 103. Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction. (91 Stat. 569; 42 U.S.C. § 7113)

NOTE OF OPINION

1. Compliance with State law

In constructing the Miles City/New Underwood transmission line, the Western Area Power Administration is not required by section 505 of the Federal Land Policy and Management Act or by section 103 of the Department of Energy Organization Act to obtain a permit from the State of South Dakota. *Citizens and Landowners Against the Miles City/New Underwood Powerline.* 683 F. 2nd 1171 (8th Cir. 1982), affirming 513 F. Supp. 257 (D.S. Dak. 1981).

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

Sec. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary. (91 Stat. 569; 42 U.S.C. § 7131)

PRINCIPAL OFFICERS

Sec. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Sec-

retary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. (91 Stat. 569; 42 U.S.C. § 7132)

ASSISTANT SECRETARIES

Sec. 203. (a) There shall be in the Department eight Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

* * * * *

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

* * * * *

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible. (91 Stat. 570; 42 U.S.C. § 7133)

NOTE OF OPINION

1. Purpose

The legislative history of section 203(a)(10) of the Department of Energy Organization Act indicates that the purpose of listing functions was to assure that they receive high-level attention in the Department, but there was no intent to restrict other Department of Energy (DOE) officials, other than the assigned Assistant Secretary, from dealing with some aspects of the listed function. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for DOE's power marketing agencies.

FEDERAL ENERGY REGULATORY COMMISSION

Sec. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. (91 Stat. 571; 42 U.S.C. § 7134)

* * * * *

TITLE III—TRANSFERS OF FUNCTIONS

GENERAL TRANSFERS

Sec. 301.

* * * * *

(b) [Transfer of miscellaneous functions from Federal Power Commission.]—Except as provided in title IV, there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence. (91 Stat. 577; 42 U.S.C. § 7151)

NOTES OF OPINIONS

Interim rates 1
Rate approval authority 2
Ratemaking, generally 3

1. Interim rates

The Secretary of Energy is without authority under sections 301(b) and 501(a)(1) of the Department of Energy Organization Act to place power rates into effect on an interim basis without confirmation and approval by the Federal Energy Regulatory Commission, as successor to the Federal Power Commission, as required by section 5 of the Flood

Control Act of 1944. *City of Fulton v. United States,* 680 F. 2d 115 (Ct. Cl. 1982). [Editor's note: This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985), but reversed by the Supreme Court sub nom *United States v. City of Fulton,* 475 U.S. _____, 89 L. Ed. 2d 661, 106 S. Ct. 1422 (1986).]

The Federal Power Commission had the power to confirm Bonneville Power Administration rates on an interim basis. The Secretary of Energy inherited these powers through the Department of Energy Organization Act. *Montana Power Company v. Edwards,* 531 F. Supp. 9 (D. Ore. 1981).

The power to determine when interim rates are "necessary" lies within the discretion of the Secretary of Energy. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 678-79 (D. Ore. 1980).

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy, in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the Natural Gas Act, 15 U.S.C. 717o, which authorizes the FPC to perform all acts necessary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 678-79 (D. Ore. 1980).

2. Rate approval authority

Section 301(b) of the Department of Energy Organization Act transfers to the Secretary of Energy the rate confirmation and approval function of the Federal Power Commission under section 5 of the Flood Control Act of 1944. *United States v. Tex-La Electric Cooperative, Inc.,* 693 F. 2d 392, 395-96 (5th Cir. 1982).

In plain and unambiguous language, Congress, in section 301(b) of the Department of Energy Organization Act, granted the rate approval authority of the Federal Power Commission for the Bonneville Power Administration to the Secretary of Energy, not to the Federal Energy Regulatory Commission. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 677-78 (D. Ore. 1980).

Pursuant to section 301(b) of the Department of Energy Organization Act, the confirmation and approval authority of the Federal Power Commission for Federal power marketing rates is vested in the Secretary of Energy. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

3. Ratemaking, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. *United States v. Tex-La Electric Cooperative, Inc.,* 693 F. 2d 392, 404 (5th Cir. 1982).

TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

Sec. 302. [Transfer of power marketing functions from Interior.]—(a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Alaska Power Administration;

(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;

(E) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(F) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, the Bonneville Power Administration, and the Alaska Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

* * * * *

(91 Stat. 578; 42 U.S.C. § 7152)

EXPLANATORY NOTES

References in the Text. Section 5 of the Flood Contract Act of 1944 (58 Stat. 887, 890), referred to in subsection (a)(1) of the text, appears in Volume II at page 800. The Bonneville Project Act of 1937 (Act of August 20, 1937, 50 Stat. 731), referred to in subsection (a)(1)(D) of the text, appears on Volume I at page 568. The Act of June 18, 1954 (68 Stat. 255), referred to in subsection (a)(1)(F) of the text, appears in Volume II at page 1139.

Western Area Power Administration. The Western Area Power Administration was created within the Department of Energy in accordance with section 302(a)(3).

Popular Name. The last sentence of section 302(a)(3), relating to cost allocations, is sometimes referred to as the McGovern Amendment, after Senator George McGovern, who authored it.

NOTES OF OPINIONS

Changes in cost allocations 1
Power marketing administrations 2
Rates and charges 3
Transmission facilities 10

1. Changes in cost allocations

It was the intent of Congress in authorizing the Pick-Sloan Missouri Basin Program (P-SMBP) in the Flood Control Act of 1944 that the "ultimate development" concept be used to establish cost allocations and repayment obligations and Congress reaffirmed that intent in 1965 by enacting the Department's interest

rate recommendation in the form of section 4(b) of the Garrison Diversion Unit reauthorization Act. The "current development" concept cannot be used for P-SMBP cost allocation and repayment purposes without approval of Congress because such a change would violate both the intent of Congress with regard to P-SMBP and section 302 of the Energy Organization Act of 1977 requiring Congressional approval of changes in cost allocations or project evaluation standards which result in a reallocation of the joint costs of completed, operational multipurpose facilities. Congressional approval of such changes can validly be secured through the appropriations process if sufficient care is taken to highlight the specific action requested distinctly and discretely, so that Congress as a whole knows exactly what is before it and can act in positive and concrete fashion. Memorandum of Solicitor Coldiron to Secretary, December 15, 1982, in re Pick-Sloan Missouri Basin Program; open audit findings.

Section 302 requires the approval of Congress before changes can be made in cost allocations or project evaluation standards which result in a reallocation of the joint costs of completed, operational multipurpose facilities. Memorandum of Solicitor Coldiron to Secretary, December 15, 1982, in re Pick-Sloan Missouri Basin Program; open audit findings.

The legislative history of the Flood Control Act of 1944, authorizing the Pick-Sloan Missouri Basin Program (P-SMBP), reflects a Congressional intent that an ultimate use type concept be used in the financial reporting of P-SMBP. In addition, section 302 of the DOE Organization Act specifically precludes changes in cost allocation for Reclamation projects without Congressional approval. Accordingly, Congressional approval would be necessary before the Secretary could change the basis for suballocations of power costs between commercial power and project use from ultimate use to current use, as recommended by a July 1978 audit report prepared by the Department's Office of Audit and Investigation. Memorandum of Assistant Solicitor Mauro to Commissioner, October 14, 1980.

2. Power marketing administrations

It is clear from the legislative history of the "separate and distinct" and "acting by and through" provisions of sections 302(a) (2) and (3) of the Department of Energy Organization Act that Congress intended to preserve the status quo of having separate power marketing agencies (PMAs) under the supervision of the Secretary of Energy, and did not intend to divest the Secretary of policy level supervision over the PMAs or diminish the previously existing Secretarial authority to establish power marketing rates. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for Department of Energy's power marketing agencies.

3. Rates and charges

The grant to the Secretary of Energy, by section 9(c) of the Reclamation Project Act of 1939 and section 302(a) of the Department of Energy Organization Act, of complete power over ratemaking provides sufficient authority to establish rates on an interim basis. Explicit statutory authority to set rates on an interim basis is not required. The broad authority of 9(c) to set the terms on the sale of power also permits the Secretary to require, as one of the terms of the sale of Colorado River Storage Project power, that interim rates be collected, subject to refund with interest. *Colorado River Energy Distributors Association v. Lewis*, 516 F. Supp. 926, 930–31 (D.D.C. 1981), case dismissed sub. nom. *Colorado River Energy Distributors Association v. Edwards*, 516 F. Supp. 933 (D.D.C. 1981).

The establishment of a confirm and approve power regarding rates of the Western Area Power Administration, and rates of the Alaska Power Administration for the Snettisham project, constitutes an appropriate action by the Secretary of Energy to subdivide his basic rate-making function in a manner designated to encourage uniformity and objective decision-making regarding rate-making for all the power marketing administrations. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis.

Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

The authority to establish rates on an interim basis is a necessary corollary of, and inherent in, the basic authority to set rates. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

10. Transmission facilities

To the extent that electrical transmission facilities are required to accomplish Central Arizona Project purposes and not power marketing purposes, the Secretary continues to have the authority to construct, operate, and maintain those facilities and such authority is unaffected by section 302 of the Department of Energy Organization Act. Memorandum of Solicitor Krulitz to Assistant Secretary, Land and Water Resources and Commissioner, September 24, 1979.

* * * * *

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

APPOINTMENT AND ADMINISTRATION

Sec. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the same political party. Any Commissioner 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 remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select

and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.

(j) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the commission (1) showing the amount requested by the Commission in its budgetary presentation to

the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress. (91 Stat. 582; 42 U.S.C. § 7171)

JURISDICTION OF THE COMMISSION

Sec. 402. (a)(1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act;

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act, and the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

* * * * *

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4,301,302,306 through 309, and 312 through 316 of the Federal Power Act; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act.

* * * * *

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) The Commission is authorized to prescribe rules, regulations, and statement of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to section 402. (91 Stat. 583; 42 U.S.C. § 7172)

NOTES OF OPINIONS

1. Interim rates

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy, in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the Natural Gas Act, 15 U.S.C. 717o, which authorizes the FPC to perform all acts necessary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 678–79 (D. Ore. 1980).

2. Rate approval authority

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

INITIATION OF RULEMAKING PROCEEDINGS BEFORE COMMISSION

Sec. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the

Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

* * * * *

(91 Stat. 585; 42 U.S.C. § 7173)

REFERRAL OF OTHER RULEMAKING PROCEEDINGS TO COMMISSION

Sec. 404. (a) Except as provided in section 403, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 301 or 306 of this Act, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402(a)(1), (b), and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendation, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5, United States Code. (91 Stat. 586; 42 U.S.C. § 7174)

RIGHT OF SECRETARY TO INTERVENE IN COMMISSION PROCEEDINGS

Sec. 405. The Secretary may as a matter or right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall

comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants. (91 Stat. 586; 42 U.S.C. § 7175)

REORGANIZATION

Sec. 406. For the purposes of chapter 9 of title 5, United States Code, the Commission shall be deemed to be an independent regulatory agency. (91 Stat. 586; 42 U.S.C. § 7176)

ACCESS TO INFORMATION

Sec. 407. (a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the commission determines is necessary to carry out its responsibilities under this Act.

(b) The Secretary, in formulating the information to be requested in the reports and investigations under section 304 and section 311 of the Federal Power Act and section 10 and section 11 of the Natural Gas Act, shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission. (91 Stat. 587; 42 U.S.C. § 7177)

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

PROCEDURES

Sec. 501. (a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission's functions under section 402(c) (1) or which the Secretary has assigned under section 402(e).

(b)(1) In addition to the requirements of subsection (a) of this section, notice of any proposed title, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

(2) Public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency pursuant to a delegation under this Act shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

(3) For the purposes of this title, the exception from the requirements of section 553 of title 5, United States Code, provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.

(c)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(d) Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule

if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.

(e) The requirements of subsections (b), (c), and (d) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(f)(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(g) Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action. (91 Stat. 587; 42 U.S.C. § 7191)

NOTES OF OPINIONS

Interim rates 1
Ratemaking, generally 2
Rulemaking 3

1. Interim rates

The Secretary of Energy is without authority under sections 301(b) and 501(a)(1) of the Department of Energy Organization Act to place power rates into effect on an interim basis without confirmation and approval by the Federal Energy Regulatory Commission, as successor to the Federal Power commission, as required by section 5 of the Flood Control

Act of 1944. *City of Fulton v. United States*, 680 F. 2d 115 (Ct. Cl. 1982). [Editor's note: This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985) but reversed by the Supreme Court sub. nom. *United States v. City of Fulton*, 475 U.S. _____, 89 L. Ed 2d 661, 106 S.Ct. 1422 (1986).]

2. Ratemaking, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. *United States v. Tex-La Electric Cooperative, Inc.*, 693 F. 2d. 392, 404 (5th Cir. 1982).

3. Rulemaking

Power from Federal hydroelectric projects is "public property" and thus was exempt from the rulemaking requirement of section 553 of the Administrative Procedure Act (APA) before the exemption was eliminated by section 501(b)(3) of the Department of Energy Organization Act. However, if the criteria used by the Southeastern Power Administration for allocating power had become so "crystallized" as to be considered a "rule" or "regulation" within the meaning of section 552 of the APA, they would have to be published. *Greenwood Utilities Commission v. Schlesinger*, 515 F. Supp. 653, 659–61 (M.D. Ga. 1981). [Editor's note: The court's decision was affirmed, 764 F.2d 1459 (11th Cir. 1985); however, the annotated holding was not discussed.]

JUDICIAL REVIEW

Sec. 502. (a) Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission of any officer, employee, or component of the Department shall notwithstanding such vesting transfer, or delegation, be made in the manner specified in or for such law.

(b) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Subject to the provisions of section 401(i) of this Act, and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28,

United States Code. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court. (91 Stat. 589; 42 U.S.C. § 7192)

* * * * *

TITLE VI—ADMINISTRATIVE PROVISIONS

* * * * *

PART C—GENERAL ADMINISTRATIVE PROVISIONS

GENERAL AUTHORITY

Sec. 641. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred. (91 Stat. 598; 42 U.S.C. § 7252)

NOTE OF OPINION

1. Rates and charges

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

DELEGATION

Sec. 642. Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate. (91 Stat. 599; 42 U.S.C. § 7252)

NOTE OF OPINION

1. Rates and charges

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

REORGANIZATION

Sec. 643. The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department

as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component. (91 Stat. 599; 42 U.S.C. § 7253)

RULES

Sec. 644. The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him. (91 Stat. 599; 42 U.S.C. § 7254)

SUBPENA

Sec. 645. For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this section. (91 Stat. 599; Act of November 9, 1978, 92 Stat. 3408; 42 U.S.C. § 7255)

EXPLANATORY NOTE

1978 Amendment. Section 508(a) of the Act of November 9, 1978 (Public Law 95–621, 92 Stat. 3408) amended section 645 by adding the last sentence. The 1978 Act does not appear herein.

CONTRACTS

Sec. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts. (91 Stat. 599; 42 U.S.C. § 7256)

ACQUISITION AND MAINTENANCE OF PROPERTY

Sec. 647. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise

for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor. (91 Stat. 599; 42 U.S.C. § 7257)

FACILITIES CONSTRUCTION

Sec. 648. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received. (91 Stat. 600; 42 U.S.C. § 7258)

USE OF FACILITIES

Sec. 649. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private

agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved. (91 Stat. 600; 42 U.S.C. § 7259)

EXPLANATORY NOTE

Reference in the Text. Section 3(e) of the Federal Property and Administrative Services Act of 1949 (Act of June 30, 1949, 63 Stat. 377) referred to in subsection (b), appears in Volume II at page 956.

FIELD OFFICES

Sec. 650. The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him. (91 Stat. 601; 42 U.S.C. § 7260)

COPYRIGHTS

Sec. 651. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights. (91 Stat. 601; 42 U.S.C. § 7261)

GIFTS AND BEQUESTS

Sec. 652. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property

received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States. (91 Stat. 601; 42 U.S.C. § 7262)

* * * * *

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

Sec. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act. (91 Stat. 605; 42 U.S.C. § 7291)

* * * * *

AGENCY TERMINATIONS

Sec. 703. Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate. (91 Stat. 606; 42 U.S.C. § 7293)

INCIDENTAL TRANSFERS

Sec. 704. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act. (91 Stat. 606; 42 U.S.C. § 7294)

SAVINGS PROVISIONS

Sec. 705. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted. (91 Stat. 606; 42 U.S.C. § 7295)

SEPARABILITY

Sec. 706. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby. (91 Stat. 607; 42 U.S.C. § 7296)

REFERENCE

Sec. 707. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions. (91 Stat. 607; 42 U.S.C. § 7297)

PRESIDENTIAL AUTHORITY

Sec. 708. Except as provided in title IV, nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions. (91 Stat. 607; 42 U.S.C. § 7298)

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

Sec. 901. The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as

the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b) (2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available. (91 Stat. 612; 42 U.S.C. § 7341)

* * * * *

EXPLANATORY NOTES

Effective Date. Executive Order 12009, issued September 13, 1977, established October 1, 1977 as the effective date of the Department of Energy Organization Act.

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to the programs and activities of Bureau of Reclamation or the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations under this statute.

EXPLANATORY NOTE

Legislative History. S. 826, Public Law 95-91 in the 95th Congress. Reported in Senate from Governmental Affairs May 14, 1977; S. Rept. No. 95-164. H.R. 6804 reported in House from Government Operations May 16, 1977 (H.R. Rept. No. 95-346, Part I) and Post Office and Civil Service May 24, 1977 (H.R. Rept. No. 95-346, Part II). House conference report H.R. Rept. No. 95-539, July 26, 1977. Senate conference report S. Rept. No. 95-367, July 27, 1977. S. 826 passed in lieu of H.R. 6804 by House and Senate August 2, 1977.

PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ENERGY RESEARCH APPROPRIATION ACT, 1978

[Extracts from] An act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1978, and for other purposes. (Act of August 7, 1977, Public Law 95-96, 91 Stat. 797)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Central Oregon Irrigation District rehabilitation program.]—*Provided further,* That of the amount herein appropriated not to exceed $400,000 for the Central Oregon Irrigation District shall be available for construction on a rehabilitation and betterment program under the Act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior: (91 Stat. 802)

EXPLANATORY NOTE

Reference in the Text. The Act of October 7, 1949 referred to in the text, is the Rehabilitation and Betterment Act (63 Stat. 724, 43 U.S.C. § 504). The 1949 Act appears in Volume II at page 969.

[Endangered Species Act.]—*Provided further,* That not to exceed $2,000,000 of this appropriation is available to carry out the purposes of the Endangered Species Act of 1973 (Public Law 93-205), as amended, including cooperative efforts as contemplated by that Act to relocate endangered or threatened species to other suitable habitats as may be necessary to expedite project construction. (91 Stat. 802)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Endangered Species Act of 1973 (Act of December 28, 1973, 87 Stat. 884), referred to in the text, appear in Volume IV in chronological order.

* * * * *

[Short title.]—This Act may be cited as the "Public Works for Water and Power Development and Energy Research Appropriation Act, 1978". (91 Stat. 809)

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted 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. 7553, Public Law 95–96 in the 95th Congress. H.R. Rept. No. 95–379. S. Rept. No. 95–301. H.R. Rept. No. 95–507 (conference report).

SOIL AND WATER RESOURCES CONSERVATION ACT OF 1977

An act to provide for furthering the conservation, protection, and enhancement of the Nation's soil, water, and related resources for sustained use, and for other purposes. (Act of November 18, 1977, Public Law 95–192, 91 Stat. 1407)

[**Sec. 1 Short title**—This Act may be cited as the "Soil and Water Resources Conservation Act of 1977."

Sec. 2. [Congressional findings.]—The Congress finds that:

(1) There is a growing demand on the soil, water, and related resources of the Nation to meet present and future needs.

(2) The Congress, in its concern for sustained use of the resource base, created the Soil Conservation Service of the United States Department of Agriculture which possesses information, technical expertise, and a delivery system for providing assistance to land users with respect to conservation and use of soils; plants; woodlands; watershed protection and flood prevention; the conservation, development, utilization, and disposal of water; animal husbandry; fish and wildlife management; recreation; community development; and related resource uses.

(3) Resource appraisal is basic to effective soil and water conservation. Since individual and governmental decisions concerning soil and water resources often transcend administrative boundaries and affect other programs and decisions, a coordinated appraisal and program framework are essential. (91 Stat. 1407; 16 U.S.C. § 2001)

Sec. 3. [Definitions.]—As used in this Act:

(1) The term "Secretary" means the Secretary of Agriculture.

(2) The term "soil, water, and related resources" means those resources which come within the scope of the programs administered and participated in by the Secretary of Agriculture through the Soil Conservation Service.

(3) The term "soil and water conservation program" means a set of guidelines for attaining the purpose of this Act. (91 Stat. 1407; 16 U.S.C. § 2002)

Sec. 4. [Policies and purposes.]—(a) In order to further the conservation of soil, water, and related resources, it is declared to be the policy of the United States and purpose of this Act that the conduct of programs administered by the Secretary of Agriculture for the conservation of such resources shall be responsive to the long-term needs of the Nation, as determined under the provisions of this Act.

(b) Recognizing that the arrangements under which the Federal Government cooperates with State soil and water conservation agencies and other appropriate State natural resource agencies such as those concerned with forestry and fish and wildlife and, through conservation districts, with other local units of government and land users, have effectively aided in the protection and improvement of the Nation's basic resources, including the

restoration and maintenance of resources damaged by improper use, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable to achieve the purpose of this Act consistent with the roles and responsibilities of the non-Federal agencies, landowners and land users.

(c) The Secretary shall promote the attainment of the policies and purposes expressed in this Act by—

(1) appraising on a continuing basis the soil, water, and related resources of the Nation;

(2) developing and updating periodically a program for furthering the conservation, protection, and enhancement of the soil, water, and related resources of the Nation consistent with the roles and program responsibilities of other Federal agencies and State and local governments; and

(3) providing to Congress and the public, through reports, the information developed pursuant to paragraphs (1) and (2) of this subsection, and by providing Congress with an annual evaluation report as provided in section 7. (91 Stat. 1407; 16 U.S.C. § 2003)

Sec. 5. [Continuing appraisal of soil, water and related resources: contents; public participation; completion dates.]—(a) In recognition of the importance of and need for obtaining and maintaining information on the current status of soil, water, and related resources, the Secretary is authorized and directed to carry out a continuing appraisal of the soil, water, and related resources of the Nation. The appraisal shall include, but not be limited to—

(1) data on the quality and quantity of soil, water, and related resources, including fish and wildlife habitats;

(2) data on the capability and limitations of those resources for meeting current and projected demands on the resource base;

(3) data on the changes that have occurred in the status and condition of those resources resulting from various past uses, including the impact of farming technologies, techniques, and practices;

(4) data on current Federal and State laws, policies, programs, rights, regulations, ownerships, and their trends and other considerations relating to the use, development, and conservation of soil, water, and related resources;

(5) data on the costs and benefits of alternative soil and water conservation practices; and

(6) data on alternative irrigation techniques regarding their costs, benefits, and impact on soil and water conservation, crop production, and environmental factors.

(b) The appraisal shall utilize data collected under this Act and pertinent data and information collected by the Department of Agriculture and other Federal, State, and local agencies and organizations. The Secretary shall establish an integrated system capable of using combinations of resource data to determine the quality and capabilities for alternative uses of the resource base and to identify areas of local, State, and National concerns

and related roles pertaining to soil and water conservation, resource use and development, and environmental improvement.

(c) The appraisal shall be made in cooperation with conservation districts, State soil and water conservation agencies, and other appropriate citizen groups, and local and State agencies under such procedures as the Secretary may prescribe to insure public participation.

(d) The appraisal shall be completed by December 31, 1979, and at each five-year interval thereafter during the period this Act is in effect. (91 Stat. 1408; 16 U.S.C. § 2004)

Sec. 6. [National soil and water conservation program: contents; completion dates.]—(a) The Secretary is hereby authorized and directed to develop in cooperation with and participation by the public through conservation districts, State and national organizations and agencies, and other appropriate means, a national soil and water conservation program (hereinafter called the "program") to be used as a guide in carrying out the activities of the Soil Conservation Service which assist landowners and land users, at their request, in furthering soil and water conservation on the private and non-Federal lands of the Nation. The program shall set forth direction for future soil and water conservation efforts of the United States Department of Agriculture based on the current soil, water, and related resource appraisal developed in accordance with section 5 of this Act, taking into consideration both the long- and short-term needs of the Nation, the landowners, and the land users, and the roles and responsibilities of Federal, State, and local governments in such conservation efforts. The program shall also include but not be limited to—

(1) analysis of the Nation's soil, water, and related resource problems;

(2) analysis of existing Federal, State, and local government authorities and adjustments needed;

(3) an evaluation of the effectiveness of the soil and water conservation ongoing programs and the overall progress being achieved by Federal, State, and local programs and the landowners and land users in meeting the soil and water conservation objectives of this Act;

(4) identification and evaluation of alternative methods for the conservation, protection, environmental improvement, and enhancement of soil and water resources, in the context of alternative time frames, and a recommendation of the preferred alternatives and the extent to which they are being implemented;

(5) investigation and analysis of the practicability, desirability, and feasibility of collecting organic waste materials, including manure, crop and food wastes, industrial organic waste, municipal sewage sludge, logging and wood-manufacturing residues, and any other organic refuse, composting, or similarly treating such materials, transporting and placing such materials onto the land to improve soil tilth and fertility. The analysis shall include the projected cost of such collection, transportation, and placement in accordance with sound locally approved soil and water conservation practices;

(6) analysis of the Federal and non-Federal inputs required to implement the program;

(7) analysis of costs and benefits of alternative soil and water conservation practices; and

(8) investigation and analysis of alternative irrigation techniques regarding their costs, benefits, and impact on soil and water conservation, crop production, and environmental factors.

(b) The program plan shall be completed not later than December 31, 1979, and be updated at each five-year interval thereafter during the period this Act is in effect. (91 Stat. 1409; 16 U.S.C. § 2005)

Sec. 7. [Transmittal of appraisal, program, and statement of policy to Congress—Report on relationship of budget projections to statement of policy—Report evaluating effectiveness of program.]—(a) On the first day Congress convenes in 1980 and at each five-year interval thereafter during the period this Act is in effect the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, the appraisal and the program as required by sections 5 and 6 of this Act, together with a detailed statement of policy regarding soil and water conservation activities of the United States Department of Agriculture.

(b) Commencing with the fiscal year ending September 30, 1982, the President shall, not later than thirty days after the submission of the budget for each fiscal year, prepare and transmit to Congress a report expressing in qualitative and quantitative terms the extent to which the programs and policies projected under the budget meet the statement of policy submitted under subsection (a) of this section. In any case in which the budget recommends a course which fails to meet the statement of policy, the President shall set forth in his report under this subsection the reasons for requesting Congress to approve the lesser program or policies presented in the budget.

(c) The Secretary, during budget preparation for fiscal year 1982 and annually thereafter during the period this Act is in effect, shall prepare and transmit to the Congress, through the President, a report to accompany the budget which evaluates the program's effectiveness in attaining the purposes of this Act. The report, prepared in concise summary form with appropriate detailed appendices, shall contain pertinent data from the current resource appraisal required to be prepared by section 5 of this Act, shall set forth the progress in implementing the program required to be developed by section 6 of this Act, and shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. The report shall also indicate plans for implementing action and recommendations for new legislation where warranted. (91 Stat. 1410; 16 U.S.C. § 2006)

Sec. 8. [Authorization of appropriations.]—There are authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act. (91 Stat. 1411; 16 U.S.C. § 2007)

Sec. 9. [Utilization of information and data from other governments and private organizations—Coordination with other Federal agencies.]—In the implementation of this Act, the Secretary shall utilize information

and data available from other Federal, State, and local governments, and private organizations and he shall coordinate his actions with the resource appraisal and planning efforts of other Federal agencies and avoid unnecessary duplication and overlap of planning and program efforts. (91 Stat. 1411; 16 U.S.C. § 2008)

Sec. 10. [Effective date.]—The provisions of this Act shall terminate on December 31, 1985. (91 Stat. 1411; 16 U.S.C. § 2009)

EXPLANATORY NOTE

Legislative History. S. 106, Public Law 94–192 in the 95th Congress. Reported in Senate from Agriculture, Nutrition, and Forestry March 18, 1977; S. Rept. No. 95–59. H.R. 75 in the 95th Congress. Reported in House from Agriculture May 16, 1977; H.R. Rept. No. 95–344. S. 106 passed Senate March 23, 1977. Passed House June 6, 1977; in lieu of H.R. 75, after amendment to contain much of the text of H.R. 75. Senate concurs in House amendments with an amendment November 2, 1977. House agrees to Senate amendment November 3, 1977.

PUEBLO INDIAN IRRIGATION CHARGES, MIDDLE RIO GRANDE CONSERVANCY DISTRICT

An act to authorize the Secretary of the Interior to contract with the Middle Rio Grande Conservancy District of New Mexico for the payment of operation and maintenance charges on certain Pueblo Indian lands. (Act of February 15, 1978, Public Law 95-230, 92 Stat. 28)

[Payment of Pueblo Indian O&M charges extended for an indefinite period—Secretary of the Treasury authorized to make payments.]—(a) The Act of August 27, 1935 (Ch. 745, 49 Stat. 887), as amended by section 5 of the Act of June 20, 1938 (Ch. 525, 52 Stat. 779), the Act of April 24, 1946 (Ch. 219, 60 Stat. 121), the Act of May 29, 1956 (Public Law 546, 70 Stat. 221), and by the Act of July 27, 1965 (Public Law 89-94, 79 Stat. 285), is further amended by deleting the words "for a period of not to exceed five years."

(b) The Secretary of the Treasury is authorized and directed to make payments under the authority of the Act amended by subsection (a) of this Act for all such periods between the date of expiration or lapse of such Act and the date of enactment of this Act. (92 Stat. 28)

Explanatory Notes

References in the Text. The Acts of August 27, 1935, June 20, 1938, April 24, 1946, and May 29, 1956, referred to in the text, do not appear herein. The Act of July 27, 1965, also referred to in the text, appears, along with a Background Note, in Volume III at page 1840.

Legislative History. H.R. 2719, Public Law 95-230 in the 95th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 95-570. Reported in Senate from Indian Affairs; S. Rept. No. 95-575. Passed House September 19, 1977. Passed Senate, amended, November 3, 1977. House concurs in Senate amendments January 31, 1978.

SETTLEMENT OF AK-CHIN INDIAN WATER RIGHTS CLAIMS

An act relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States. (Act of July 28, 1978, Public Law 95-328, 92 Stat. 409)

[Sec. 1. Declaration to resolve Ak-Chin Indian water rights claims.]—(a) [T]he Congress hereby declares that it is the policy of Congress to resolve, without costly and lengthy litigation, the claims of the Ak-Chin Indian community for water based upon failure of the United States to meet its trust responsibility to the Indian people provided reasonable settlement can be reached.

(b) The Congress hereby finds and declares that—

(1) the Ak-Chin Indian community relies for its economic sustenance on farming, and that ground water, necessary thereto, is declining at a rate which will make it uneconomical to farm within the next few years;

(2) at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, and such obligation remains unfulfilled;

(3) it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined;

(4) there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of water suitable for irrigation on the reservation can be delivered;

(5) this Act is proposed to settle the Ak-Chin Indian community's claim for water by meeting the emergency needs of the Ak-Chin community through construction of a well field and water delivery system from nearby Federal lands and by obligating the United States to meet the Ak-Chin community's needs for a permanent supply of water in a fixed amount to be available upon a date certain, in exchange for a release of all claims such community has against the United States for failing to act consistently with its trust responsibility to protect and deliver the water resources of the community; and

(6) it is the intention of this Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligation of the United States toward the Ak-Chin Indian community. (92 Stat. 409)

Sec. 2. [Secretary of the Interior to contract to meet emergency water needs of Ak-Chin Indians.]—(a) For the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall undertake engineering and hydrological studies as may be necessary to determine whether there exists, on Federal lands near the Ak-Chin Indian Reservation, a source of ground water which could be taken, on an annual basis, for use

in connection with any contract entered into pursuant to subsection (b) of this section, subject to the provisions in (c) (2). Such studies shall be completed and a report with respect thereto submitted to the Congress within twelve months after the date of the enactment of this Act.

(b) Within one hundred and eighty days following the submission to the Congress of the report referred to in subsection (a), the Secretary, if he determines that there exists a source of ground water which can be so taken on an annual basis, shall enter into a contract or other agreement with the Ak-Chin Indian community pursuant to which the Secretary shall agree, on behalf of the United States, to—

(1) furnish, subject to the provisions of clause (2) of subsection (c) of this section, to the Ak-Chin Indian community, commencing within sixty days following the completion of the necessary facilities under clause (2) of this subsection but in no event later than four years from the date of said contract, the delivery to the southeast corner of the lands comprising the Ak-Chin Indian Reservation, on an annual basis, of eighty-five thousand acre-feet of ground water from nearby Federal lands covered by such studies;

(2) take such action as may be necessary to begin within sixty days following the date of such contract, to drill, construct, equip, maintain, repair, reconstruct, and operate a well field on such Federal lands, and to construct and maintain a delivery system, including canals, pumping stations and other appurtenant works, sufficient to provide for the delivery of such ground water from such Federal lands to the southeast corner of the lands comprising the Ak-Chin Indian Reservation.

(c) (1) The delivery of ground water under clause (1) of subsection (b) shall continue until augmented or replaced by the permanent water supply required under section 3 to be delivered to the Ak-Chin Indian Reservation, except that the obligation to deliver ground water during any year shall be reduced for that year by an amount equal to the amount of surface water delivered to such community pursuant to such contract during such year.

(2) Notwithstanding the provisions of clause (1) of subsection (b) of this section, the Secretary, if he determines that pumping eighty-five thousand acre-feet of ground water annually from nearby Federal lands to the Ak-Chin community would (A) not be hydrologically feasible or (B) diminish the ground water supply in the basin and thereby cause severe damage to other water users; may deliver a lesser amount.

(d) The Secretary is authorized to receive and consider any claims arising under this Act from water users other than the Ak-Chin Indian community for compensation for any losses or other expenses incurred by such users by reason of the enactment of this Act or actions taken thereunder.

(e) Notwithstanding any other provision of this Act, if the Secretary determines on the basis of studies conducted pursuant to subsection (a) of this section, that the pumping on an annual basis of any such ground water pursuant to clause (1) of subsection (b) of this section in excess of sixty thousand acre-feet is not possible by reason of clause (2) of subsection (c), and the Ak-Chin Indian community does not agree to contract for a lesser

amount, the Secretary shall report to the Congress an alternative plan for meeting the emergency needs of the Ak-Chin Indian community. Such alternative plan shall be submitted to the Congress within one hundred and eighty days following the submission of the report referred to in subsection (a). (92 Stat. 410)

Sec. 3. [Permanent delivery of irrigation water to Ak-Chin Indians.]—In addition, and as part of the contract referred to in section 2(b) of this Act, the Secretary shall provide for, commencing as soon as possible, but in no event later than the expiration of the twenty-five-year period following the date of the enactment of this Act, the permanent delivery, on an annual basis, to the lands comprising the Ak-Chin Indian Reservation, of eighty-five thousand acre-feet of water suitable for irrigation on the reservation. (92 Stat. 411)

Sec. 4. [Waiver of Ak-Chin Indian claims regarding water rights—No waiver of claims against United States for breach of obligation set forth in Sections 2 and 3.]—(a) As consideration on the part of the Ak-Chin Indian community for entering into any contract or agreement pursuant to section 2(b), the Ak-Chin Indian community shall agree to waive, in a manner satisfactory to the Secretary, any and all claims of water rights or injuries to water rights of the Ak-Chin Indian community, including both ground water and surface water from time immemorial to the present, which it might have against the United States, the State of Arizona or agency thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(b) As further consideration on the part of the Ak-Chin Indian community for entering into any contract or other agreement pursuant to section 2(b), the Ak-Chin Indian community shall agree to waive any and all claims of water rights or injuries to water rights, including both ground water and surface water, arising under the laws of the United States or the State of Arizona, which it might have in the future against any person, corporation, municipal corporation, or the State of Arizona or agency thereof.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the community will not thereby waive any claims against the United States for breach, if any, of the contract referred to in section 2(b) of this Act. A failure to deliver water within the times specified in either section 2(b) or 3 shall be deemed a breach of the contract. The measure of damages for any such breach shall be the replacement cost of water not delivered by the United States. (92 Stat. 411)

Sec. 5. [Appropriations authorization for functions under Section 2.]—There are authorized to be appropriated for the fiscal year ending September 30, 1979, the sume of $500,000, and the aggregate sume of $42,500,000 to be appropriated prior to the fiscal year ending September 30, 1983, for carrying out the purposes of section 2 of this Act. Notwithstanding any other provisions of this Act, no authorization to make payments under this Act, or to enter into contracts, shall be effective except to such

extent or in such amounts as are provided in advance in appropriations Acts. (92 Stat. 411)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1582, Public Law 95-328 in the 95th Congress. Reported in Senate from Indian Affairs; S. Rept. No. 460. Passed Senate October 11, 1977. Passed House, amended, June 29, 1978, in lieu of H.R. 8099, previously passed by the House. Senate concurred in House amendment, July 13, 1978. See also H.R. Rept. No. 954 reported from Interior and Insular Affairs on H.R. 8099.

NATIONAL CLIMATE PROGRAM ACT

[Extracts from] An act to establish a comprehensive and coordinated national climate policy and program, and for other purposes. (Act of September 17, 1978, Public Law 95-367, 92 Stat. 601)

Sec. 1. [Short title.]—This Act may be cited as the "National Climate Program Act."

Sec. 2. [Congressional findings.]—

The Congress finds and declares the following:

(1) Weather and climate change affect food production, energy use, land use, water resources and other factors vital to national security and human welfare.

(2) An ability to anticipate natural and man-induced changes in climate would contribute to the soundness of policy decisions in the public and private sectors.

(3) Significant improvements in the ability to forecast climate on an intermediate and long-term basis are possible.

(4) Information regarding climate is not being fully disseminated or used, and Federal efforts have given insufficient attention to assessing and applying this information.

(5) Climate fluctuation and change occur on a global basis, and deficiencies exist in the system for monitoring global climate changes. International cooperation for the purpose of sharing the benefits and costs of a global effort to understand climate is essential.

(6) The United States lacks a well-defined and coordinated program in climate-related research, monitoring, assessment of effects, and information utilization. (92 Stat. 601; 15 U.S.C. § 2901)

Sec. 3. [Congressional purpose.]—

It is the purpose of the Congress in this Act to establish a national climate program that will assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications. (92 Stat. 601; U.S.C. § 2903)

Sec. 4. [Definitions.]—

As used in this Act, unless the context otherwise requires:

(1) The term "Office" means the National Climate Program Office.

(2) The term "Program" means the National Climate Program.

(3) The term "Secretary" means the Secretary of Commerce. (92 Stat. 601, 15 U.S.C. § 2903)

Sec. 5. [National Climate Program.]—

(a) [President to establish.]—The President shall establish a National Climate Program in accordance with the provisions, findings and purposes of this Act.

(b) [5-year plans—Roles of Federal entities—Coordination.]—The President shall—

(1) promulgate the 5-year plans described in subsection (d)(9);

(2) define the roles in the Program of Federal officers, departments, and agencies, including the Departments of Agriculture, Commerce, Defense, Energy, Interior, State, and Transportation; the Environmental Protection Agency; the National Aeronautics and Space Administration; the Council on Environmental Quality; the National Science Foundation; and the Office of Science and Technology Policy; and

(3) provide for Program coordination.

(c) [National Climate Program Office.]—The Secretary shall establish within the Department of Commerce a National Climate Program Office not later than 30 days after the date of the enactment of this Act. The Office shall be the lead entity responsible for administering the Program. Each Federal officer, employee, department and agency involved in the Program shall cooperate with the Secretary in carrying out the provisions of this Act.

(d) [Required elements of Program.]—The Program shall include, but not be limited to, the following elements:

(1) assessments of the effect of climate on the natural environment, agricultural production, energy supply and demand, land and water resources, transportation, human health and national security. Such assessments shall be conducted to the maximum extent possible by those Federal agencies having national programs in food, fiber, raw materials, energy, transportation, land and water management, and other such responsibilities, in accordance with existing laws and regulations. Where appropriate such assessments may include recommendations for action;

(2) basic and applied research to improve the understanding of climate processes, natural and man induced, and the social, economic, and political implications of climate change;

(3) methods for improving climate forecasts on a monthly, seasonal, yearly, and longer basis;

(4) global data collection, and monitoring and analysis activities to provide reliable, useful and readily available information on a continuing basis;

(5) systems for the management and active dissemination of climatological data, information and assessments, including mechanisms for consultation with current and potential users;

(6) measures for increasing international cooperation in climate research, monitoring, analysis and data dissemination;

(7) mechanisms for intergovernmental climate-related studies and services including participation by universities, the private sector and others concerned with applied research and advisory services;

(8) experimental climate forecast centers, which shall (A) be responsible for making and routinely updating experimental climate forecasts of a monthly, seasonal, annual, and longer nature, based on a variety of experimental techniques; (B) establish procedures to have forecasts reviewed and their accuracy evaluated; and (C) protect against premature reliance on such experimental forecasts; and

(9) a preliminary 5-year plan, to be submitted to the Congress for review and comment, not later than 180 days after the enactment of this Act, and a final 5-year plan to be submitted to the Congress not later than 1 year after the enactment of this Act, that shall be revised and extended biennially. Each plan shall establish the goals and priorities for the Program, including the intergovernmental program under section 6, over the subsequent 5-year period, and shall contain details regarding (A) the role of Federal agencies in the programs, (B) Federal funding required to enable the Program to achieve such goals, and (C) Program accomplishments that must be achieved to ensure that Program goals are met within the time frame established by the plan.

(e) [Advisory committee and interagency groups.]—(1) The Secretary shall establish and maintain an advisory committee of users and producers of climate data, information and services to advise the Secretary and the Congress on the conduct of the Program. Members of such committee shall not be employed by the Federal Government and may receive compensation at the daily rate for GS-16 of the General Schedule for each day engaged in the actual performance of their duties for the committee and while so serving away from their homes or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence.

(2) The Secretary shall establish and maintain such interagency groups as are necessary and appropriate to assist in carrying out responsibilities under this Act.

(f) [Cooperation with other entities involved in climate-related programs.]—(1) The Program shall be conducted so as to encourage cooperation with, and participation in the Program by, other organizations or agencies involved in related activities. For this purpose the Secretary shall cooperate and participate with other Federal agencies, and foreign, international, and domestic organizations and agencies involved in international or domestic climate-related programs.

(2) The Secretary and the Secretary of State shall cooperate in (A) providing representation at climate-related international meetings and conferences in which the United States participates, and (B) coordinating the activities of the Program with the climate programs of other nations and international agencies and organizations, including the World Meteorological Organization, the International Council of Scientific Unions, the United Nations Environmental Program, the United Nations Educational, Scientific, and Cultural Organization, the World Health Organization, and Food and Agriculture Organization.

(g) [Budget requirements.]—(1) Each Federal agency and department participating in the Program, shall prepare and submit to the Office of Management and Budget, on or before the date of submission of departmental requests for appropriations to the Office of Management and Budget, an annual request for appropriations for the Program for the subsequent fiscal year. The Office of Management and Budget shall review the request for appropriations as an integrated, coherent, multiagency request.

(2) Section 304 of the Act of October 18, 1962 (31 U.S.C. 25) (relating to preparation of horizontal budgets for meteorology), is amended—

(A) by inserting "and of the National Climate Program established under the National Climate Program Act" after "meteorology", and

(B) by striking out "aspects of the program" and inserting in lieu thereof "aspects of the programs".

The amendments made by the preceding sentence shall apply with respect to budgets submitted for fiscal years beginning 6 months or more after the date of the enactment of this Act. (92 Stat. 601; 15 U.S.C. § 2904)

EXPLANATORY NOTE

Reference in the Text. Section 304 of the Act of October 18, 1962 (Public Law 87-843, 76 Stat. 1097), referred to in the text, appears in Volume III at page 1953 as codified at 31 U.S.C. § 25. It was recodified in 1982 at 31 U.S.C. § 1105 (21) and so appears in the Appendix in Supplement I.

Sec. 6. [Intergovernmental Climate Program.]—

(a) [Federal and State cooperative activities—Grants to States—Limitation and restriction on costs.]—The Secretary shall establish a program for Federal and State cooperative activities in climate studies and advisory services. The Secretary is authorized to make annual grants to any State or group of States, such grants to be made available to public or private educational institutions, to State agencies and to other persons or institutions qualified to conduct climate-related studies or provide climate-related services. Such grants may be made for not more than 50 percent of the costs, in any one year, of the research conducted or services provided under the grant. Federal funds received from other sources shall not be used to pay the remaining share of the cost of such research or services. The Secretary shall work with other appropriate mission agencies in conducting this program.

(b) [Services and functions of intergovernmental program.]—The intergovernmental program shall provide, among others, the following State and regional services and functions:

(1) studies relating to and analyses of climate effects on agricultural production, water resources, energy needs, and other critical sectors of the economy;

(2) atmospheric data collection and monitoring on a statewide and regional basis;

(3) advice to regional, State, and local government agencies regarding climate-related issues;

(4) information to users within the State regarding climate and climatic effects; and

(5) information to the Secretary regarding the needs of persons within the State for climate-related services, information and data.

(c) [Findings required prior to grant.]—Prior to making a grant to any State or group of States under this section, the Secretary shall find that—

(1) the State, or each of the States in a group, had adopted a State climate program in accordance with the provisions of this Act and rules and regulations promulgated by the Secretary; and

(2) the State, or each of the States in a group has—

(A) integrated its climate program with the Program; and

(B) established an effective mechanism for consultation and coordination with Federal and local government officials and users with the State.

The Secretary shall insure that grants made to a State or group of States under this section are made on an equitable basis. (92 Stat. 603; 15 U.S.C. § 2905)

Sec. 7. [Annual report to President and Congress.]—

The Secretary shall prepare and submit to the President and the authorizing committees of the Congress, not later than March 31 of each year, a report on the activities conducted pursuant to this Act during the preceding fiscal year, including—

(a) a summary of the achievements of the Program during the previous fiscal year;

(b) an analysis of the progress made toward achieving the goals and objectives of the Program;

(c) a copy of the 5-year plan and any changes made in such plan;

(d) a summary of the multiagency budget request for the Program of subsection 5(g); and

(e) any recommendations for additional legislation which may be required to assist in achieving the purposes of the Act. (92 Stat. 604; § 202(b), Act of December 21, 1982, 96 Stat. 1822; 15 U.S.C. § 2906)

Sec. 8. [General provisions.]—

(a) [Federal functions may be exercised under contract or grant arrangements.]—Functions vested in any Federal officer or agency by this Act or under the Program may be exercised through the facilities and personnel of the agency involved or, to the extent provided or approved in advance in appropriation Acts, by other persons or entities under contracts or grant arrangements entered into by such officer or agency.

(b) [Contract or grant recordkeeping—Audit and examination.]—(1) Each person or entity to which Federal funds are made available under a contract or grant arrangement as authorized by this Act shall keep such records as the Director of the Office shall prescribe, including records which fully disclose the amount and disposition by such person or entity of such funds, the total cost of the activities for which such funds were so made available, the amount of that portion of such cost supplied from other sources, and such other records as will facilitate an effective audit.

(2) The Director of the Office and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of 3 years after the completion of the activities (referred to in paragraph (1) of any person or entity pursuant to any contract or grant arrangement referred to in subsection (a), have access for the purpose of audit and examination to any books, documents, papers, and records of such person or entity which, in the judgment of the Director or the Comptroller General, may be related or pertinent to such contract or grant arrangement. (92 Stat. 604; 15 U.S.C. § 2907)

Sec. 9. [Authorization of appropriations.]—

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 6669, Public Law 95-367 in the 95th Congress. Reported in the House from Science and Technology May 6, 1977; H.R. Rept. No. 95-266. Passed House September 9, 1977. Reported in Senate from Commerce, Science, and Transportation April 18, 1978; S. Rept. No. 95-740. Passed Senate, amended, April 24, 1978. Conference report H.R. Rept. No. 95-1489, August 14, 1978. Senate agrees to conference report August 17, 1978. House agrees to conference report September 6, 1978.

SALT RIVER PIMA-MARICOPA INDIAN RESERVATION BOUNDARY

An act to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes. (Act of September 30, 1978, Public Law 95-399, 92 Stat. 851)

Sec. 1. [Congressional findings and policy.]—(a) The Congress hereby finds that—

(1) the Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian community to live in peace and prosperity with other persons in Arizona;

(2) at the time of the creation of such reservation, a portion of the south boundary was established to follow the course of the Salt River;

(3) the United States granted patents for, and leaseholds and other interests in, lands adjacent to such boundary for sand and gravel excavation and for other purposes to persons who were not members of such Indian community;

(4) subsequent to the establishment of such boundary, the course of the Salt River shifted, creating uncertainty with respect to the precise location of such boundary; and

(5) by an Executive order, the Secretary of the Interior located and permanently fixed such boundary in a location which included within such reservation, lands for which the United States had previously issued patents, leaseholds, and other interests, causing confusion and an ongoing controversy between such Indian community and persons holding such patents, leaseholds, and other interests.

(b) The Congress hereby declares that it is the policy of the Congress to resolve, without costly and lengthy litigation, the dispute between the Salt River Pima-Maricopa Indian community and the persons referred to in subsection (a)(3) over the location of the south boundary of the Salt River Pima-Maricopa Indian Reservation. (92 Stat. 851)

Sec. 2. [Modification of south boundary.]—The south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona (hereinafter in this Act referred to as the "reservation"), created by the Executive order issued on June 14, 1879, shall be modified in accordance with the provisions of sections 3 and 4 of this Act. Any portion of such boundary established by this Act shall be fixed and permanent and not ambulatory. (92 Stat. 851)

Sec. 3. [Acquisition of lands—Deemed to have been by condemnation—Addition to reservation—Tribal lands not subject to allotment.]—(a)(1) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire by purchase or condemnation the lands described in paragraph (2). Upon acquisition, such lands shall be added to the reservation. The acquisition of lands under this subsection, and payment for such

lands under section 5(b) of this Act, shall be deemed to have been pursuant to condemnation by the United States.

(2) The lands authorized to be acquired in paragraph (1) are located in township 1 north, range 5 east, Gila and Salt River base and meridian, Arizona, and are those portions of land in—

(A) the south half of the southeast quarter of section 7 of such township and range;

(B) the south half of the southwest quarter of section 8 of such township, and range; and

(C) the southwest quarter of the southeast quarter of section 4 of such township and range;

which lie north of that boundary line representing the middle of the south channel of the Salt River and the south boundary of the Salt River Indian Reservation as shown of record on a map entitled "Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Arizona, Dependent Resurvey and Survey of the South Boundary of Salt River Indian Reservation" which consists of four sheets, dated August 17, 1972, and is on file and available for public inspection at the Department of the Interior, Bureau of Land Management, Washington, District of Columbia.

(b) Upon the acquisition of the lands described in subsection (a), the reservation shall include all lands in township 1 north, range 5 east, Gila and Salt River base and meridian, Arizona, lying north of that boundary line representing the middle of the south channel of the Salt River and the south boundary of the Salt River Indian Reservation as shown of record on the map referred to in subsection (a)(2), except for any portion of the following parcels of land:

(1) the north half of the northwest quarter of section 18 of such township and range;

(2) the north half of the northeast quarter of section 18 of such township and range;

(3) the north half of the southeast quarter of the northeast quarter of section 8 of such township and range;

(4) the northwest quarter of the northwest quarter of section 9 of such township and range;

(5) the northeast quarter of the northwest quarter of section 9 of such township and range;

(6) the southeast quarter of the northwest quarter of section 3 of such township and range;

(7) the north half of the north half of the southwest quarter of section 3 of such township and range;

(8) the southwest quarter of the northeast quarter of section 3 of such township and range; and

(9) the northeast quarter of the northeast quarter of section 3 of such township and range.

(c) The boundary of the reservation shall be extended to include the following parcels of land:

(1) in township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona—

(A) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and a line parallel to and 150 feet north of the concrete canal lining on the northerly edge of the South Canal within the west 1,000 feet of section 13 of such township and range;

(B) any portion of the southeast quarter of the southeast quarter of section 14 of such township and range lying south and east of the reservation boundary created by the Executive order issued on June 14, 1879, as amended;

(C) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended and a line parallel to and 150 feet north of the top of the concrete canal lining on the northerly edge of the South Canal in sections 24, 23, 22, and 27 of such township and range and the east half of section 28 of such township and range, except for approximately 16 acres of land described as that part of the west half of the southwest quarter of section 27 of such township and range lying north of the South Canal;

(D) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and the north line of the south half of the southwest quarter of section 28 of such township and range;

(E) the area between the reservation boundary created by the Executive order issued on June 14, 1879, as amended, and the north line of the south half of the south half of sections 29 and 30 of such township and range; and

(F) the north 600 feet of the Granite Reef Reserve in lots 2 and 3 of section 13 of such township and range; and

(2) in township 2 north, range 5 east, Gila and Salt River base and meridian, Arizona, the south 450 feet of the Evergreen Reserve in the west half of the northwest quarter of the northwest quarter of the southeast quarter of section 23.

(d) Any lands added to the reservation under this Act shall become a part of the reservation in all respects and upon all the same terms as if such lands had been included in the Executive order issued by the President on June 14, 1879, as amended, except that such lands shall remain tribal lands and shall not be subject to allotment to individual Indians. (92 Stat. 851)

Sec. 4. [U.S. title to parcels of land within reservation boundaries—Arizona Canal right-of-way—Other reclamation project lands.]—(a) The United States shall have, free of any claim of Indian title or trusteeship by the Salt River Pima-Maricopa Indian community, all rights and interests in, and absolute and unqualified title to, the following parcels of land:

(1) those portions of the Arizona Canal right-of-way within the exterior boundaries of the Salt River Indian Reservation as defined by the March 29, 1913, accepted United States general land office resurveys of township 2 north, range 5 east and township 2 north, range 6 east of the Gila and

Salt River base and meridian, Arizona, and supplemental surveys dated September 30, 1924, plats of which are of record in the Arizona State Office of the Bureau of Land Management, United States Department of the Interior, Phoenix, Arizona;

(2) that portion of the reservation in section 13, township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona, lying between the southerly prolongation of the west line of lot 2 and the southerly prolongation of the east line of lot 3 of section 13 and lying between the southerly boundaries of lots 2 and 3 and the southerly reservation boundary created by the Executive order issued on June 14, 1879, as amended;

(3) United States Reclamation Service Reserve (Granite Reef), which consists of lots 2 and 3 in section 13, township 2 north, range 6 east, Gila and Salt River base and meridian, Arizona, except the north 600 feet of such lots 2 and 3, title to which has been confirmed in the United States for the benefit of the Salt River Pima-Maricopa Indian community; and

(4) United States Reclamation Service Reserve (Evergreen), which consists of lot 9 and the west half of the northwest quarter of the northwest quarter of the southeast quarter of section 23, township 2 north, range 5 east, Gila and Salt River base and meridian, Arizona, except the south 450 feet of such Reserve, title to which has been confirmed in the United States for the benefit of the Salt River Pima-Maricopa Indian community.

(b) The reservation boundary shall be modified to exclude from the reservation the parcels of land described in paragraphs (1) through (4) of subsection (a). (92 Stat. 853)

Sec. 5. [Payment for lands—Release and satisfaction of claims.]—(a)(1) The Secretary shall determine the fair market value of those portions of the parcels of land described in paragraphs (1) through (9) of section 3(b) of this Act which lie north of the boundary line referred to in section 3(b) of this Act, and shall pay an amount equal to such fair market value or $1,964,520, whichever is greater, to the Salt River Pima-Maricopa Indian community.

(2) Acceptance of the payment described in paragraph (1) shall constitute a complete release and satisfaction of any claim which the Salt River Pima-Maricopa Indian community may have against the United States or holder of any interest with respect to any right, title, or interest in any portion of the parcels of land described in paragraphs (1) through (9) of section 3(b) of this Act which are located north of the boundary line referred to in section 3(b) of this Act.

(b)(1) Except as otherwise provided in paragraph (2), the Secretary shall determine the fair market value of each parcel of land acquired by the United States and added to the Reservation pursuant to section 3(a) (1) of this Act, and shall pay an amount equal to such fair market value to the owner, under a patent issued by the United States, of such parcel.

(2) If the aggregate of all amounts to be paid under paragraph (1) is less than the sum of $1,951,740, in lieu of such payments under paragraph (1),

the Secretary shall pay such sum to the owners, under patents issued by the United States, of the parcels of land acquired by the United States and added to the reservation pursuant to section 3(a) (1) of this Act. In determining the amount of any payment to any person under this paragraph with respect to such parcels of land, the proportion of the amount of the payment to any person to $1,951,740 shall be equal to the proportion of the amount of the acreage of such parcel which such person owns, under a patent issued by the United States, to the total acreage of such parcels.

(3) Acceptance of the payment described in paragraph (1) or (2) by any person shall constitute a complete release and satisfaction of any claim which such person may have against the United States, the Salt River Pima-Maricopa Indian community, or holder of any interest with respect to any right, title, or interest in any portion of the parcels of land described in subparagraphs (A), (B), or (C) of section 3(a) (2) of this Act which are located north of the boundary line referred to in section 3(a) (2) of this Act. (92 Stat. 854)

Sec. 6. [Authorization of appropriations.]—Effective October 1, 1979, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. (92 Stat. 855)

EXPLANATORY NOTE

Legislative History. S. 3002, Public Law 95-399 in the 95th Congress. Reported in Senate from Indian Affairs; S. Rept. No. 95-1170. H.R. 12344 reported in House from Interior and Insular Affairs; H.R. Rept. No. 95-1498. S. 3002 passed Senate September 11, 1978. Passed House, in lieu of H.R. 12344, September 19, 1978.

SWPA RATE DISCRIMINATION

An act to prohibit discrimination in rates charged by the Southwestern Power Administration. (Act of October 13, 1978, Public Law 95-456, 92 Stat. 1235)

[Sec. 1. Rate discrimination by SWPA based on delivery arrangements prohibited.]—Power and energy marketed by the Southwestern Power Administration pursuant to section 825s of title 16, United States Code (1970), shall be sold at uniform systemwide rates, without discrimination between customers to whom the Southwestern Power Administration delivers such power and energy by means of transmission lines or facilities constructed with appropriated funds, and customers to whom the Southwestern Power Administration delivers such power and energy by means of transmission lines or facilities, the use of which is acquired by lease, wheeling, or other contractual arrangements.

Sec. 2. [Effective when contract amended.]—This Act shall not become effective until Contract No. 14-02-00001-1002, effective August 1, 1962, between the United States of America and Associated Electric Cooperative, Inc., Springfield, Missouri, has been amended in a manner mutually agreeable to the parties thereto.

Explanatory Notes

Purpose of the Act. The purpose of the Act is to eliminate the Transmission Service Charge of the Southwestern Power Administration promulgated in 1970. For a description of the controversy see *Associated Electric Cooperative, Inc. v. Morton,* 507 F.2d 1167 (D.C. Cir. 1974), cert. denied, 423 U.S. 830 (1975).

Reference in the Text. Section 825s of Title 16, United States Code (1970), referred to in the text, is section 5 of the Flood Control Act of 1944 (58 Stat. 887). The 1944 Act appears in Volume II at page 796.

Legislative History. S. 2249, Public Law 95-456 in the 95th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 792. H.R. 13069 reported in House from Interior and Insular Affairs; H.R. Rept. No. 1543. S. 2249, amended, passed House in lieu of H.R. 13069 September 26, 1978. Senate concurs in House amendments September 29, 1978.

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT Of 1978

An act to require foreign persons who acquire, transfer, or hold interests in agricultural land to report such transactions and holdings to the Secretary of Agriculture and to direct the Secretary to analyze information contained in such reports and determine the effects such transactions and holdings have, particularly on family farms and rural communities, and for other purposes. (Act of October 14, 1978, Public Law 95-460, 92 Stat. 1263)

Sec. 1. [Short title.]—This Act may be cited as the "Agricultural Foreign Investment Disclosure Act of 1978". (92 Stat. 1263; 7 U.S.C. § 3501 note)

Sec. 2. [Reporting requirements for foreign persons who acquire, transfer, or hold interests in agricultural lands.]—(a) Any foreign person who acquires or transfers any interest other than a security interest, in agricultural land shall submit a report to the Secretary of Agriculture not later than 90 days after the date of such acquisition or transfer. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain—

(1) the legal name and the address of such foreign person;

(2) in any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) in any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) the type of interest in agricultural land which such foreign person acquired or transferred;

(5) the legal description and acreage of such agricultural land;

(6) the purchase price paid for, or any other consideration given for, such interest;

(7) in any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred and—

(A) in any case in which such transferee is an individual, the citizenship of such transferee; and

(B) in any case in which such transferee is not an individual or a government, the nature of the legal entity holding the interest, the country in which such transferee is created or organized, and the principal place of business of such transferee;

(8) the agricultural purposes for which such foreign person intends, on the date on which such report is submitted to the Secretary, to use such agricultural land; and

(9) such other information as the Secretary may require by regulation.

(b) Any foreign person who holds any interest, other than a security interest, in agricultural land on the day before the effective date of this

section shall submit a report to the Secretary not later than 180 days after such effective date. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain—

(1) the legal name and the address of such foreign person;

(2) in any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) in any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) the type of interest in agricultural land which is held by such foreign person;

(5) the legal description and acreage of such agricultural land;

(6) the purchase price paid for, or any other consideration given for, such interest;

(7) the agricultural purposes for which such foreign person—

(A) is using such agricultural land on the date on which such report is submitted to the Secretary; and

(B) intends, as of such date, to use such agricultural land; and

(8) such other information as the Secretary may require by regulation.

(c) Any person who holds or acquires (on or after the effective date of this section) any interest, other than a security interest, in agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person shall submit a report to the Secretary not later than 90 days after the date on which such person becomes a foreign person. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain the information required by subsection (b) of this section. This subsection shall not apply with respect to any person who is required to submit a report with respect to such land under subsection (b) of this section.

(d) Any foreign person who holds or acquires (on or after the effective date of this section) any interest, other than a security interest, in land at a time when such land is not agricultural land and such land subsequently becomes agricultural land shall submit a report to the Secretary not later than 90 days after the date on which such land becomes agricultural land. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain the information required by subsection (b) of this section. This subsection shall not apply with respect to any person who is required to submit a report with respect to such land under subsection (b) of this section.

(e) With respect to any foreign person, other than an individual or a government, who is required by subsection (a), (b), (c), or (d) of this section to submit a report, the Secretary may, in addition, require such foreign person to submit to the Secretary a report containing—

(A) the legal name and the address of each person who holds any interest in such foreign person;

(B) in any case in which the holder of such interest is an individual, the citizenship of such holder; and

(C) in any case in which the holder of such interest is not an individual or a government, the nature of the legal entity holding the interest, the country in which such holder is created or organized, the principal place of business of such holder.

(f) With respect to any person, other than an individual or a government, whose legal name is contained in any report submitted under subsection (e) of the section, the Secretary may require such person to submit to the Secretary a report containing—

(A) the legal name and the address of any person who holds any interest in the person submitting the report under this subsection;

(B) in any case in which the holder of such interest is an individual, the citizenship of such holder; and

(C) in any case in which the holder of such interest is not an individual or a government, the nature of the legal entity holding the interest, the country in which such holder is created or organized, and the principle place of business of such holder. (92 Stat. 1263; 7 U.S.C. § 3501)

Sec. 3. [Failure to submit report or knowing submission of inadequate, misleading or false report—Civil penalty.]—(a) If the Secretary determines that a person—

(1) has failed to submit a report in accordance with the provisions of section 2, or

(2) has knowingly submitted a report under section 2—

(A) which does not contain all the information required to be in such report, or

(B) which contains information that is misleading or false,

such person shall be subject to a civil penalty imposed by the Secretary. The amount of any such civil penalty shall be determined in accordance with the provisions of subsection (b) of this section. Any such civil penalty shall be recoverable in a civil action brought by the Attorney General of the United States in an appropriate district court of the United States.

(b) The amount of any civil penalty imposed by the Secretary under subsection (a) of this section shall be such amount as the Secretary determines to be appropriate to carry out the purposes of this Act, except that such amount shall not exceed 25 percent of the fair market value, on the date of the assessment of such penalty, of the interest in agricultural land with respect to which such violation occurred. (92 Stat. 1265; 7 U.S.C. § 3502)

Sec. 4. [Monitoring of compliance.]—The Secretary may take such actions as the Secretary considers necessary to monitor compliance with the provisions of this Act and to determine whether the information contained in any report submitted under section 2 accurately and fully reveals the ownership interest of all foreign persons in any foreign person who is required to submit a report under such section. (92 Stat. 1265; 7 U.S.C. § 3503)

Sec. 5. [Analysis and determination of effects on family farms and

rural communities—Reports to President and Congress.]—(a) In accordance with the schedule set forth in subsection (b) of this section, the Secretary shall—

(1) with respect to each period set forth in such subsection, analyze information obtained by the Secretary under section 2 and determine the effects of foreign persons acquiring, transferring, and holding agricultural land, particularly the effects of such acquisitions, transfers, and holdings on family farms and rural communities; and

(2) transmit to the President and each House of the Congress a report on the Secretary's findings and conclusions regarding—

(A) each analysis and determination made under paragraph (1); and

(B) the effectiveness and efficiency of the reporting requirements contained in section 2 in providing the information required to be reported by such section.

(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination transmitted, pursuant to subsection (a) of this section—

(1) with respect to information obtained by the Secretary under section 2 during the 6-month period following the effective date of section 2, within 9 months after such effective date;

(2) with respect to information obtained by the Secretary under section 2 during the 12-month period following the effective date of section 2, within 15 months after such effective date; and

(3) with respect to each calendar year following the 12-month period referred to in paragraph (2), within 90 days after the end of such calendar year. (92 Stat. 1265; 7 U.S.C. § 3504)

Sec. 6. [Transmission of reports submitted by foreign persons to States.]—Not later than 30 days after the end of each 6-moth period beginning after the effective date of section 2, the Secretary shall transmit to each State department of agriculture, or such other appropriate State agency as the Secretary considers advisable, a copy of each report which was submitted to the Secretary under section 2 during such 6-month period and which involved agricultural land located in such State. (92 Stat. 1266; 7 U.S.C. §3505)

Sec. 7. [Reports submitted by foreign persons available for public inspection.]—Any report submitted to the Secretary under section 2 shall be available for public inspection at the Department of Agriculture located in the District of Columbia not later than 10 days after the date on which such report is received by the Secretary. (92 Stat. 1266; 7 U.S.C. § 3506)

Sec. 8. Regulations.]—Not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe regulations for purposes of carrying out the provisions of this Act. (92 Stat. 1266; 7 U.S.C. §3507)

Sec. 9. [Definitions.]—For purposes of this Act—

(1) the term "agricultural land" means any land located in one or more States and used for agricultural, forestry, or timber production purposes as determined by the Secretary under regulations to be prescribed by the Secretary;

(2) the term "foreign government" means any government other than the Federal Government or any government of a State or a political subdivision of a State:

(3) the term "foreign person" means—

(A) any individual—

(i) who is not a citizen or national of the United States;

(ii) who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) who is not lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act;

(B) any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(C) any person, other than an individual or a government—

(i) which is created or organized under the laws of any State; and

(ii) in which, as determined by the Secretary under regulations which the Secretary shall prescribe, a significant interest or substantial control is directly or indirectly held—

(I) by any individual referred to in subparagraph (A);

(II) by any person referred to in subparagraph (B);

(III) by any foreign government; or

(IV) by any combination of such individuals, persons, or governments; and

(D) any foreign government;

(4) the term "person" includes any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity;

(5) the term "Secretary" means the Secretary of Agriculture; and

(6) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States. (92 Stat. 1266; 7 U.S.C. § 3508)

Sec. 10. [Effective dates.]—(a) Except as provided in subsection (b) of this section, this Act shall become effective on the date of the enactment of this Act.

(b) Section 2 shall become effective on the date on which regulations prescribed by the Secretary under section 8 become effective. (92 Stat. 1267; U.S.C. § 3501 note)

EXPLANATORY NOTE

Legislative History. S. 3384, Public Law 95-460 in the 95th Congress. Reported in Senate from Agriculture, Nutrition, and Forestry; S. Rept. No. 95-1072. H.R. 13356 reported in House from Agriculture; H.R. Rept. No. 95-1570. S. 3384 passed Senate August 11, 1978. S. 3384 passed House, amended, in lieu of H.R. 13356, September 26, 1978. Senate concurs in House amendments October 2, 1978.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATION ACT, 1979

[Extracts from] An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979, and for other purposes. (Act of October 17, 1978, Public Law 95-465, 92 Stat. 1279)

TITLE I—DEPARTMENT OF THE INTERIOR LAND AND WATER RESOURCES

* * * * *

Sec. 110. [Site specific Environmental Impact Statements deemed adequate.]—(a) Notwithstanding any provisions of the National Environmental Policy Act of 1969, Public Law 91-190 (42 U.S.C. 4321 et seq.), construction of any feature of the Upper Colorado River Storage Project as authorized by the Act of April 11, 1956, as amended, shall proceed if a final Environmental Impact Statement has been filed on such feature.

(b) Notwithstanding any provisions of the National Environmental Policy Act of 1969, Public Law 91-190 (42 U.S.C. 4321 et seq.), the Colorado River Basin Salinity Control Projects, as authorized by Public Law 93-320, and construction of any feature of the Central Arizona Project as authorized by Public Law 90-537, September 30, 1968 (43 U.S.C. 1501 et seq.), shall proceed if a final Environmental Impact Statement has been filed on such feature.

(c) Notwithstanding any provisions of the National Environmental Policy Act of 1969, Public Law 91-190 (42 U.S.C. 4321 et seq.), construction of any feature of the Southern Nevada Water Project as authorized by Public Law 89-292 (43 U.S.C. 616ggg), as amended, shall proceed if a final Environmental Impact Statement has been filed on any such feature. (92 Stat. 1291)

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted 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.

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970, 83 Stat. 852), referred to in the text, appears in Volume IV in chronological order.

Reference in the Text. The Act of April 11, 1956 (70 Stat. 105), referred to in subsection (a) of the text, appears in Volume II at page 1248.

References in the Text. Public Law 90-537 (Act of September 30, 1968, 82 Stat. 886) and Public Law 93-320 (Act of June 24, 1974, 88 Stat. 266), referred to in subsection (b) of the text, appear in Volume IV in chronological order.

Reference in the Text. Public Law 89-292 (Act of October 22, 1965, 79 Stat. 1068), referred to in subsection (c) of the text, appears in Volume III at page 1851.

Legislative History. H.R. 12932, Public Law 95-465 in the 95th Congress. H.R. Rept. No. 95-1251. S. Rept. No. 95-1063. H.R. Rept. No. 95-1672 (conference report).

NOTE OF OPINION

1. Environmental impact statements

Section 110 of Public Law 95-465, which provides that, irrespective of the National Environmental Policy Act, water resource projects or project features within the Colorado River Basin may proceed to completion so long as a site specific environmental impact statement has been filed, prevents the construction of such projects or features from being delayed by the preparation of a basin-wide environmental impact statement. Consequently, an action by the State of Utah for a declaratory judgment that the National Environmental Policy Act does not require a comprehensive basin-wide impact statement for the entire Colorado River Basin does not present a justiciable controversy, as no basin-wide impact statement had yet been funded and no injury could occur until after the earliest date for completion of the basin-wide statement, 1985. *Utah v. Andrus,* 636 F.2d 276 (10th Cir. 1980).

WATER RESEARCH AND DEVELOPMENT ACT OF 1978

An act to promote a more adequate and responsive national program of water research and development, and for other purposes. (Act of October 17, 1978, Public Law 95-467, 92 Stat. 1305)

[Sec. 1. Short Title.]—This Act may be cited as the "Water Research and Development Act of 1978". (92 Stat. 1305; 42 U.S.C. § 7801 note)

Sec. 2. [Congressional findings on water supply.]—The Congress finds and declares that—

(a) providing for the protection of the Nation's water resources, assuring an adequate supply of water of good quality for the production of food, materials, and energy for the Nation's needs, and increasing the efficient use of the Nation's water resources are essential to national economic stability and growth, and to the well-being of our people;

(b) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at both the Federal and State levels;

(c) there should be a continuing national investment in water-related research and technology which is commensurate with growing national needs; and

(d) the manpower pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished. (92 Stat. 1305; 42 U.S.C. § 7801)

Sec. 3. [Purpose.]—It is the purpose of ths Act to assist the Nation and the States through water resources science and technology—

(a) to provide a supply of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;

(b) to preserve and enhance our water resources and the water-related environment;

(c) to promote conservation and efficient use of the Nation's water resources;

(d) to promote research and development, demonstration, and technology transfer dealing with both quality and quantity of water resources;

(e) to identify and find practical solutions to the Nation's water and water resources related problems;

(f) to promote the training of scientists, engineers, and other skilled personnel in the fields related to water resources;

(g) to foster and supplement present programs for the conduct of research, technology development and transfer, and innovative water resources management, conservation, and operating practices;

(h) to provide for research, development, technology demonstration, and transfer with respect to converting saline and other impaired waters

to waters suitable for municipal, agricultural, industrial, recreational, or other beneficial uses;

(i) to disseminate information through the maintenance of a water resources scientific information center with adequate information bases so that the Nation's water research community, by utilizing the center, can be fully informed of research activities and other types of information necessary for them to effectively conduct their work;

(j) to better coordinate the Nation's water resources development programs; and

(k) to enhance the capacity of the Federal water establishment, and of water interests nationwide for recommending to the President and the Congress changes in national water resources research and technology policy as appropriate. (92 Stat. 1306; 42 U.S.C. § 7802)

TITLE I—WATER RESOURCES RESEARCH AND DEVELOPMENT

Sec. 101. [Secretary of the Interior assistance to state water resources research institutes established at land grant colleges—Research and training topics—Secretary approves institutes' annual programs—Authorization of technology transfer program.]—(a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is hereby authorized and directed to assist in carrying on the work of a competent and qualified water resources research and technology institute, center, or equivalent agency (hereinafter referred to as "institute") at one college or university in each State, which college or university shall be a college or university established in accordance with the Act approved July 2, 1862 (12 Stat. 503; 7 U.S.C. 301ff), entitled "An Act donating public lands to the several States and territories which may provide colleges for the benefit of agriculture and the mechanic arts" or some other institution designated by Act of the legislature of the State concerned: *Provided,* That (1) if there is more than one such college or university in a State established in accordance with said Act of July 2, 1862, funds under this section shall, in the absence of a designation to the contrary by act of the legislation of the State, be paid to the one such college or university designated by the Governor of the State to receive the same, subject to the Secretary's determination that such college or university has, or may reasonably be expected to have the capability of doing effective work under this title; (2) two or more States may cooperate in the designation of a single institute or regional institute, in which event the sums assignable to all of the cooperating States shall be paid to such institute; (3) the designated State institute shall cooperate closely with other colleges and universities in the State with demonstrated research, information dissemination, and graduate training capabilities in developing a statewide program directed to resolving State and regional water and related land problems; and (4) the designated State institute shall cooperate closely with regional consortia, as may be designated by the Secretary, to increase the effectiveness of the nationwide net-

work of institutes and for the purpose of regional coordination, particularly with river basin commissions and other interagency river basin organizations as may be established by the Congress.

(b) (1) It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated or other qualified colleges or universities within the State, to conduct competent research and development including investigations and experiments of either a basic or practical nature, or both, in relation to water resources, to promote dissemination and application of the results of these efforts, and to provide for the training of scientists and engineers through such research, investigations, and experiments.

(2) The research, investigations, experiments, and training may include, without being limited to, aspects of the hydrologic cycle; supply and demand for water; saline water conversion; conservation and best use of available supplies of water and methods of increasing such supplies; water reuse; and economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of water problems; scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions, for water research and development projects now being conducted by agencies of the Federal and State governments, the agricultural and engineering experiment stations, and other university research centers and for the need to avoid undue displacement of scientists and engineers elsewhere engaged in water resources research and development.

(3) The annual program submitted by the State institutes to the Secretary for approval shall include assurances satisfactory to the Secretary, that such programs were developed in close consultation and collaboration with leading water resources officials within the State and region to promote research, training, information dissemination and other work meeting the needs of the State. Additionally, it shall be the duty of each State institute to provide the Secretary with periodic information, at the Secretary's discretion, on water resources research and development activities, needs, and priorities within the State which shall be coordinated with State, local, regional and river basin entities, and to cooperate with the Secretary in preparing periodic reports of ongoing research within the State and its funding by both Federal and non-Federal organizations. Institutes are required to see that notices of research projects are submitted to the center referred to under title III, section 302.

(4) The designated State institutes shall cooperate with the Secretary in the development of five-year water resources research and development goals and objectives.

(5) The designated institutes will receive comment on and transmit all research and development proposals from the academic community to the Secretary for consideration and funding.

(c) There is further hereby authorized a program of technology transfer and/or information dissemination to be carried out by the State institutes. Such funds, as are appropriated for this purpose, shall be made available on a competitive basis to the State institutes, based on the merit of project or program proposals submitted to the Secretary, for the purpose of transferring research and develoment results to other organizations for further development, demonstration, and practical application. (92 Stat. 1307; 42 U.S.C. § 7811)

EXPLANATORY NOTE

Reference in the Text. The Act of July 2, 1862, referred to in the text, is commonly known as the Morrill Act, and established the land-grant college system. The 1862 Act does not appear herein.

Sec. 102. [Funds appropriated under Title I available for publishing, planning cooperation among state institutes.]—Funds appropriated pursuant to this title, in addition to being available for expenses for research and development experiments, and training conducted under authority of this title, shall also be available for printing and publishing the results thereof in the furtherance of technology transfer and for planning and direction. The institutes are hereby authorized and encouraged to plan and conduct programs financed under this title in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the water problems involved, and funds appropriated pursuant to this title shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research. (92 Stat. 1308; 42 U.S.C. § 7812)

Sec. 103. [Secretary to prescribe necessary rules and policies, to develop water resources research program, to determine if institutes receive appropriated funds.]—(a) The Secretary is hereby charged with the responsibility for the proper administration of this title and, after full consultation with other interested Federal agencies, may prescribe such procedures, rules, and policies as may be necessary to carry out its provisions. He shall require a showing that institutes designated to receive funds have, or may reasonably be expected to have, the capability of doing effective work. He shall furnish such advice and assistance as will best promote the purposes of this title, participate in coordinating research initiated by the institutes under this title, indicate to them such lines of inquiry as to him seem most important, and assist the establishment and maintenance of cooperation among the institutes, other research organizations, the United States Department of the Interior, and other Federal establishments.

(b) The Secretary shall develop a five-year water resources research program in cooperation with the institutes and appropriate water entities, indicating goals, objectives, priorities, and funding requirements.

(c) The Secretary shall annually ascertain that the requirements of subsection 101 (b) have been met as to each institute, whether it is entitled to receive its share of the annual appropriations for water resources research

and development under section 401 (a) of this Act and the amount which it is entitled to receive. (92 Stat. 1308; 42 U.S.C. § 7813)

Sec. 104. [No Federal control of education implied under Title I.]—Nothing in this title shall be construed to impair or modify the legal relation existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this title shall in any way be construed to authorize Federal control or direction of education at any college or university. (92 Stat. 1308; 42 U.S.C. § 7814)

Sec. 105. [Matching grants to institutes for approved projects—Authorization of grants and contracts to educational institutions, private concerns, and government agencies.]—(a) The Secretary is authorized to make grants to institutes to match, on a dollar-for-dollar basis, funds available to institutes from non-Federal sources to meet the necessary expenses of specific water and related land resources research projects which the institute could not otherwise undertake, including the expenses of planning and coordinating regional projects by two or more institutes. Each application for a grant pursuant to this subsection shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation, region, and State concerned, its relation to other known research projects theretofore pursued or currently being pursued, and the extent to which it will provide opportunity for training of water resources scientists. No grant shall be made under this subsection except for a project approved by the Secretary, and all grants shall be made upon the basis of the merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of water resources scientists.

(b) The Secretary is authorized to make grants to, and finance contracts and matching or other agreements with qualified educational institutions; private foundations or other institutions; and with private firms and individuals whose training, experience, and qualifications are adequate in his judgment for the conduct of water research and development projects; and with local, State, and Federal Government agencies to undertake research and development concerning any aspect of water-related problems which he may deem desirable in the national interest. (92 Stat. 1309; 42 U.S.C. § 7815)

Sec. 106. [Topics of research and development programs.]—Water resources research and development programs carried out in accordance with this title may include, without being limited to water use conservation and efficiencies; water and related planning; saline water conversion; water reuse; management and operations; legal systems; protection and enhancement of the water-based environment; institutional arrangements; salinity management; and economic, social, and environmental impact assessment. Due consideration shall be given to priority problems identified by water and related land resources planning, data acquisition, and like studies con-

ducted by other agencies and organizations. (92 Stat. 1309; 42 U.S.C. § 7816)

Sec. 107. [Definition of "State."]—As used in this title, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (92 Stat. 1309; 42 U.S.C. § 7817)

Sec. 108. [Advance payment of initial expenses under contracts.]—Contracts or other arrangements for water resource work authorized under this title with an institute, educational institution, or nonprofit organization may be undertaken without regard to the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529) when, in the judgment of the Secretary, advance payments of initial expenses are necessary to facilitate such work. (92 Stat. 1309; 42 U.S.C. § 7818)

EXPLANATORY NOTE

Reference in the Text. Section 3648 of the Revised Statutes (31 U.S.C. § 529), referred to in the text, appears in Volume III, Appendix, at page 1962. Section 3648 was revised and recodified in 1982 as 31 U.S.C. § 3324 and appears as such in the Appendix in Supplement I.

Sec. 109. [Secretary authorized to operate programs demonstrating viability of water improvement processes—Necessary provisions for reports to Congressional committees prior to expenditure of appropriated funds—Proposed contract provisions—Conveyance of Federal interests.]—(a) The Secretary is authorized to study, design, implement, operate, and maintain water resources programs and activities demonstrating the technical and economic viability of processes, systems, or techniques for the purpose of improving the water or water-related environment and to demonstrate the application of water resources research and development results and technology for beneficial purposes.

(b) (1) Funds appropriated pursuant to the authority provided by sections 401 (d) and 403 for use under this section may not be expended until thirty calendar days (including days on which either the House of Representatives or the Senate are not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs and the chairman of the Committee on Science and Technology of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate.

(2) Such report shall present information that includes, but is not limited to, the location of the demonstration activities, the characteristics of the water and water-related problem, the processes or concepts to be demonstrated, the estimated initial investment cost of the demonstration, the estimated annual operating cost of the demonstration, the source of energy for the demonstration and its cost, environmental consequences of the demonstrations; and the estimated costs associated with the demonstration considering the amortization of all components of the demonstration.

(3) Such report shall also be accompanied by a proposed contract or agreement between the Secretary and a duly authorized Federal or non-Federal public or private entity, in which such entity shall agree to share cost to the extent deemed important to the purposes of the activity as determined by the Secretary. Such proposed contract or agreement may provide that either the contractual entity or the United States will develop the activity described in the report and that the United States will either operate and maintain the activity or may participate in the operation and maintenance during which, in either case, access to the activity and its operating data will not be denied to the Secretary or his representatives.

(4) The Secretary is authorized to include in the proposed contract or agreement a provision for conveying all rights, title, and interests of the Federal Government to the Federal or non-Federal, public or private entity subject to a future right to reenter the activity for the purpose of financing at Federal expense modifications for advanced technology and for its operation and maintenance for a successive term under the same conditions as pertain to the original term. (92 Stat. 1310; 42 U.S.C. § 7819)

TITLE II—WATER RESEARCH AND DEVELOPMENT FOR SALINE AND OTHER IMPAIRED WATERS

Sec. 200. [Policy to assist conversion of saline waters for beneficial uses.]—Consistent with the Federal responsibility for water resources development and conservation by means of comprehensive planning, water resources development projects, protection of water quality standards, and other measures for the beneficial use of water from various sources, the Congress finds it necessary to provide for the development of technology for the conversion of saline and other impaired waters for beneficial uses. It is the policy therefore to assist and encourage the development of practical means to utilize saline water technology to convert impaired waters of any type from any source to a quality suitable for municipal, industrial, agricultural, and other beneficial uses to transfer research and development results. (92 Stat. 1310; 42 U.S.C. § 7831)

Sec. 201. [Authorization for research and testing on saline water conversion processes.]—The Secretary is authorized and directed to—

(a) conduct, encourage, and promote basic scientific research and fundamental studies to develop effective and economical processes and equipment for the purpose of converting impaired water into water suitable for beneficial uses;

(b) pursue the findings of research and studies authorized by this title having potential practical applications, including application to matters other than water conversion, and to other supply sources such as brackish waters, staged development, and use with energy sources;

(c) conduct engineering and technical work including the design, construction, and testing of various processes, systems, and pilot plants to develop saline water conversion processes to the point of demonstration;

(d) study methods for recovery, beneficial uses and disposal of residuals, and marketing of byproducts resulting from the improvement or

conversion of impaired water in an environmentally acceptable manner;

(e) undertake economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various parts of the United States by saline water conversion processes and, by means of models, or other methodologies, prepare and maintain information concerning the relation of such conversion processes and systems to other aspects of State, regional, and national comprehensive water resources planning. (92 Stat. 1310; 42 U.S.C. § 7832)

Sec. 202. [Development of recommendations for Federal participation in prototype plants—Federal water and power marketing agencies' participation—Acceptance of other governmental assistance.]—(a) The Secretary is authorized to conduct preliminary investigations and explore potential cooperative agreements with non-Federal utilities and governmental entities in order to develop recommendations for Federal participation in the design, construction, operation, and maintenance of demonstration and prototype plants utilizing advanced saline water technologies for the production of water for beneficial use.

(b) In carrying out the provisions of this section, the Secretary shall utilize the expertise of the water and power marketing agencies of the Department of the Interior or of other Federal agencies to insure that the recommended project and the supporting agreements are fully integrated and compatible with the water and power systems of the region.

(c) The Secretary is authorized to accept financial and other assistance from any State or public agency in connection with studies or surveys relating to impaired water and facilities and to enter into contract with respect to such assistance. (92 Stat. 1311; 42 U.S.C. § 7833)

Sec. 203. [Rules and regulations.]—The Secretary may issue rules and regulations to effectuate the purposes of this title. (92 Stat. 1311; 42 U.S.C. § 7834)

Sec. 204. [Definitions for Title II.]—As used in this title—

(a) the term "saline and other impaired water" includes but is not limited to seawater, brackish water, mineralized ground or surface water, irrigation return flows, and other similarly contaminated waters;

(b) the term "United States" extends to and includes the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(c) the term "pilot plant" means an experimental unit of sufficient size used to evaluate and develop new or improved processes or systems and to obtain technical and engineering data;

(d) the term "demonstration" means a plant of sufficient capacity and reliability to demonstrate on a day-to-day operating basis that the process or system is feasible and that such process or system has potential for application to water system improvement;

(e) the term "prototype" means a full-size, first-of-a-kind production plant used for the development and study of full-sized technology, energy, and process economics. (92 Stat. 1311; 42 U.S.C. § 7835)

Sec. 205. [Study, design, construction of demonstration plants—Cooperative agreements—Title to facilities constructed by non-Federal entity—Expenditure of funds following report to Congress—Proposed contract—Access to demonstration and operating data—Authorization of appropriations—Contractual authority.]—(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided,* That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further,* That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by chapter 63 of title 31) with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.

(b) Funds appropriated pursuant to the authority provided by this section may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others, if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, nec-

essary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of $50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act, the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements 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. (92 Stat. 1311; Act of October 15, 1980, 94 Stat. 2032; 42 U.S.C. § 7836)

EXPLANATORY NOTE

1980 Amendment. The Act of October 15, 1980 (Public Law 95-467, 94 Stat. 2032) substantially revised subsections (a), (b), (c), and (d) to read as they appear above. The 1980 Act does not appear herein.

TITLE III—TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION

Sec. 300. [Research assessment and technology transfer program.]—The Secretary is authorized to conduct a research assessment and technology transfer program which transfers research and development results to other organizations and individuals for further development and practical application to water and water-related problems. The Secretary may enter into agreements with the State and local governments and with other public

and private organizations and individuals, including cost-sharing or cost-participation agreements, for the transfer or application of research results for the solution of water-related problems and to further the transfer developed by programs authorized under this Act. The Secretary may issue publications and may conduct seminars, conferences, training sessions, or use other such techniques he deems necessary to expedite the transfer of research results and technology development. The technology transfer activities will be coordinated with activities undertaken under titles I and II of this Act. (92 Stat. 1312; 42 U.S.C. § 7851)

Sec. 301. [National center for water resources research information and development—Coordination with other agencies.]—The Secretary is further authorized to maintain a national center for the acquisition, processing, and dissemination of information dealing with all areas of water resources research, technology development, and demonstration. Each Federal agency engaged in water resources including research, technology development, and demonstration, shall cooperate by providing the center with documents and other pertinent information. The center shall (a) maintain for general use a collection of water resources information provided by Federal and non-Federal government agencies, colleges, universities, private institutions, and individuals; (b) issue publications or utilize other media to disseminate research, technology development, and demonstration information for the purposes of this Act and enter into agreements with public or private organizations or individuals to stimulate acquisition and dissemination of information, thus contributing to a comprehensive, nationwide program of research and development in water resources and the avoidance of unnecessary duplication of effort; (c) make generally available abstracts and other summary type information concerning water resources activities including research projects accomplished and in progress by all Federal agencies and by non-Federal agencies, private institutions, and individuals, to the extent such information can be obtained, and reports completed on research projects funded under provisions of this Act; and (d) in carrying out the information dissemination activities authorized by this section, the Secretary shall to the extent feasible use the resources and facilities of other agencies and of the clearinghouse for scientific, technical, and engineering information established in the Department of Commerce pursuant to sections 1151 through 1157 of title 15, United States Code. (92 Stat. 1312; 42 U.S.C. § 7852)

Sec. 302. [Center for cataloging scientific research in water resources.]—There shall be established, in such agency and location as the President determines to be desirable, a center for cataloging current scientific research in all fields of water resources. Each Federal agency doing water resources research shall cooperate by providing the cataloging center with information on work underway. The cataloging center shall classify and maintain for general use a file of water resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as voluntarily may make such information available. (92 Stat. 1312; 42 U.S.C. § 7853)

TITLE IV—GENERAL PROVISIONS

Sec. 400. [Authority of Secretary of the Interior.]—(a) As used in this Act, the term "Secretary" means the Secretary of the Interior.

(b) In carrying out his functions under this Act, the Secretary may:

(1) make grants to educational institutions and scientific organizations, and enter into contracts with institutions and organizations and with industrial or engineering firms;

(2) acquire the services of chemists, physicists, engineers, and other personnel by contract or otherwise;

(3) utilize the facilities of Federal scientific laboratories;

(4) establish and operate necessary facilities and test sites to carry on the continuous research, testing, development, and programing necessary to effectuate the purposes of this title;

(5) acquire processes, technical data, inventions, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation pursuant to the Federal Property and Administrative Services Act (40 U.S.C. 471) as amended, where applicable;

(6) assemble and maintain pertinent and current scientific literature, publications, patents, licenses, land and interests in land (including water rights thereto);

(7) cause onsite inspections to be made of promising projects, domestic and foreign, and in the case of projects located in the United States, cooperate and participate in their development when the purposes of this title will be served thereby;

(8) foster and participate in regional, national, and international conferences relating to water resources;

(9) accept financial and other assistance from any local, State, Federal, or other agency or entity in connection with studies or surveys relating to water problems and facilities and enter into contracts with regard to such assistance;

(10) coordinate, correlate, and publish information with a view to advancing the development of practicable water conversion projects; and

(11) cooperate with other Federal departments and agencies, with State and local departments, agencies, and instrumentalities, and with interested persons, firms, institutions, and organizations. (92 Stat. 1313; 42 U.S.C. § 7871)

EXPLANATORY NOTE

Reference in the Text. The procurement provisions of the Federal Property and Administrative Services Act, referred to in subsection (b) (5) of the text, appear in Volume III, Appendix, beginning at page 1996 and in the Appendix in Supplement I at 41 U.S.C. §§ 251 et seq.

Sec. 401. [Appropriation authorizations for fiscal year 1979 and 1980 under sections 101(a) and (c), 105 (a) and (b), and 109—Cost sharing formula for sections 101(a) and (c).]—

* * * * *

(92 Stat. 1314; Act of October 15, 1980, 94 Stat. 2032; 42 U.S.C. § 7872)

Sec. 402. [Appropriation authorization for fiscal years 1979 and 1980 for Title II research, development, and demonstration plants—Restriction on funding foreign activities.]—

* * * * *

(92 Stat. 1314; Act of October 15, 1980, 94 Stat. 2032; 42 U.S.C. § 7873)

Sec. 403. [Appropriation authorization for fiscal years 1979 and 1980 for remaining sections of Titles I, II, III, and IV.]—

* * * * *

(92 Stat. 1314; Act of October 15, 1980, 94 Stat. 2032; 42 U.S.C. § 7874)

Sec. 404. [Contents of grant application.]—Each application for a grant, pursuant to this Act, shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the water problem it addresses, the qualifications of the personnel who will direct and conduct it, the importance of the project to the water-related economy of the Nation, the need for and expected utilization of the results, the region and the State concerned, its relation to other known research projects previously conducted or currently being pursued, the procedures by which the results can be disseminated, and the extent to which it will provide opportunities for the training of water resources scientists and engineers. No grant shall be made except for projects approved by the Secretary and all grants shall be made upon the basis of the merit of the project, the need for the knowledge it is expected to produce when completed, and the opportunities it provides for the training of water resources scientists and engineers. (92 Stat. 1315; 42 U.S.C. § 7875)

Sec. 405. [Use of appropriated funds.]—(a) Sums appropriated pursuant to this Act may be paid at such times and in such amounts during each fiscal year as determined by the Secretary and upon vouchers approved by him. Except as may be otherwise specified by this Act, funds received pursuant to such payment may be used for any allowable costs within the meaning of the Federal procurement regulations that establish principles for determining costs applicable to research and development under grants and contracts with educational institutions.

(b) Each State institute operating pursuant to title I of this Act shall have an officer appointed by its governing authority who shall receive and account for all funds paid to the institute under the provisions of this Act and who shall provide to the Secretary an annual statement of the amounts received under any of the provisions of this Act during the preceding fiscal year, and of its disbursement. If any of the moneys received by the authorized receiving officer of any State institute under the provisions of this Act shall, by any action or contingency, be found by the Secretary to have

been improperly diminished, lost, or misapplied, it shall be replaced and until so replaced no subsequent disbursement of Federal funds shall be made to any institute of such State. (92 Stat. 1315; 42 U.S.C. § 7876)

Sec. 406. [Cooperation with government agencies to avoid duplication in research efforts—Report to Congress.]—(a) The Secretary shall cooperate fully with, and shall obtain the continuing advice and cooperation of, all agencies of the Federal Government concerned with water problems, State and local governments, and private institutions and individuals, to assure that the programs conducted under this Act will supplement and not duplicate other water research and technology programs, will stimulate research and development in neglected areas, and will provide a comprehensive, nationwide program of water resources research and development. In order to further these purposes, as well as to assure research undertaken by the Secretary on wastewater treatment and treatment of water for potable use is most responsive to needs in implementing the Federal Water Pollution Control Act, as amended (Public Law 92-500), and the Safe Drinking Water Act, as amended (Public Law 93-523), the Secretary will consult with the Administrator of the Environmental Protection Agency in developing and implementing programs in these areas. The Secretary will encourage utilization of the center referred to in title III, section 302, for cataloging current research projects in order to assure that programs conducted under this Act will supplement and not duplicate other research and technology programs and will encourage other Federal agencies to do likewise.

(b) The President shall, by such means as he deems appropriate, clarify agency responsibilities for Federal water resources research and development and provide for interagency coordination of such research, including the research authorized by this Act. Such coordination shall include (1) continuing review of the adequacy of the Government-wide program in water resources research and development and identification of technical needs in various water resources research categories, (2) identification and elimination of duplication and overlaps between two or more programs, (3) recommendations with respect to allocation of technical effort among the Federal agencies, (4) review of technical manpower needs and findings concerning the technical manpower base of the program, (5) recommendations concerning management policies to improve the quality of the Government-wide research effort, and (6) actions to facilitate interagency communication at management levels.

(c) The Secretary shall report within one year of the date of enactment of this Act to the chairman of the Committee on Science and Technology of the House of Representatives concerning actions taken by the Secretary and the President to implement this section. (92 Stat. 1316; 42 U.S.C. § 7877)

EXPLANATORY NOTE

References in the Text. The Federal Water Pollution Control Act, referred to in subsection (a) of the text, was extensively revised by the Federal Water Pollution Control Act Amendments of 1972 (Act of October 18, 1972, Public Law 92–500, 86 Stat. 816), and

other amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume II, under the 1972 Amendments, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983. Public Law 93-523, also referred to in subsection (a) of the text as the Safe Drinking Water Act, as amended, provides for national drinking water quality standards. An extract from the Safe Drinking Water Act appears in the new Appendix in Supplement I at 42 U.S.C. § 300j-6.

Sec. 407. [Conveyance of property—Dispositions—Applicability of Federal reclamation laws.]—(a) Property acquired by the Secretary under this Act for use in furtherance of the purposes of this Act may be conveyed to a cooperating institute, educational institution, or nonprofit organization in accordance with the Federal Property and Administrative Services Act of 1949, as amended.

(b) The Secretary may dispose of water and byproducts resulting from his operations under this Act. All moneys received from dispositions under this Act shall be paid into the Treasury as miscellaneous receipts except where such operations may be undertaken as part of a Federal reclamation project in which case the financial provisions of the reclamation laws (32 Stat. 388 and Acts amendatory thereof and supplementary thereto) shall govern. (92 Stat. 1316; 42 U.S.C. § 7878)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Federal Property and Administrative Services Act (Act of June 30, 1949), as amended, referred to in subsection (a) of the text, relating to conveyance of property, appear in Volume II at page 956.

Sec. 408. [Patent policy.]—With respect to patent policy and to the definition of title to, and licensing of inventions made or conceived in the course of, or under any contract or grant pursuant to this Act, and notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 9 and 10 of the Federal Nonnuclear Energy, Research, and Development Act of 1974 (Public Law 93-577; 88 Stat. 1887, 1891; 42 U.S.C. 5908, 5909): *Provided however,* That subsections (1) and (n) of section 9 of such Act shall not apply to this Act: *Provided further, however,* That, subject to the patent policy of section 408, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this Act, shall be provided in such manner that all information, data, and knowhow, regardless of their nature or mediums, resulting from such research and development will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public consonant with the purpose of this Act. (92 Stat. 1316; 42 U.S.C. § 7879)

EXPLANATORY NOTE

Reference in the Text. Section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974, referred to in the text, establishes patent procedures for nonnuclear inventions made under contracts with the Energy Research and Development Administration, now absorbed into the Department of Energy. Subsections (l) and (n) of

Section 9, referred to in the text, provide that the Energy Research and Development Administration shall be a defense agency of the United States for the purpose of maintaining secrecy of inventions and direct that a report be prepared concerning the applicability of present patent law to the programs to which the 1974 Act refers, respectively. Section 10 of the Act, also referred to in the text, states that nothing in the Act shall be deemed to create an antitrust immunity or defense. The 1974 Act is codified at 42 U.S.C. § 5901 et. seq. and does not appear herein.

Sec. 409. [Institutes' reports to Secretary of the Interior—Secretary's report to Congress and the President.]—The institutes shall submit a summary report to the Secretary on or before January 31 of each year which highlights research and development work accomplished during the preceding fiscal year, the status of projects underway, and recommended future projects. This report is in addition to such other reports as may be required by sections 101(b) and 405(b) of this Act. The Secretary shall submit a summary report to the President and the Congress on or before April 1 of each year which summarizes program activities of the preceding fiscal year and projects for the future. (92 Stat. 1316; 42 U.S.C. § 7880)

Sec. 410. [Repeals—No alteration thereby of law of water ownership or control.]—(a) The Water Resources Research Act of 1964 (Public Law 88-379, 78 Stat. 329; 42 U.S.C. 1961 et seq.), as amended, and the Saline Water Conversion Act of 1971 (Public Law 92-60, 85 Stat. 159; 42 U.S.C. 1959 et seq.), as amended, are hereby repealed.

(b) Nothing elsewhere in this Act is intended to repeal, supersede, or diminish existing authorities or responsibilities of any agency of the Federal Government concerning water resources.

(c) Nothing in this Act shall be construed to alter existing law with respect to the ownership and control of water. (92 Stat. 1317; 42 U.S.C. § 7881)

EXPLANATORY NOTE

Saline Water Conversion Act of 1971. The Saline Water Conversion Act of July 29, 1971, which was repealed by section 410, itself repealed the Saline Water Conversion Act of July 3, 1952. Section 1 of the 1971 Act established its short title. Section 2 stated the Congressional policy of developing practicable means of increasing the quality of saline and other chemically contaminated water. Section 3 authorized the Secretary of the Interior to conduct research on desalting processes, construct and test pilot desalting plants, and to perform cost studies comparing desalting processes with other water treatment programs. Section 4 directed the Secretary to recommend a program for construction of a large-scale prototype desalting plant; the Secretary was to consult with the power marketing agencies of the Federal government to integrate the prototype plant with the water and power systems of the region in which the plant was to be located. Section 5 described the Secretary's powers in fulfilling responsibilities under the 1971 Act. Section 6 required the Secretary to cooperate with other interested Federal agencies in carrying out research and development activities and provided that Federal reclamation law would govern monies received by dispositions of water and by-products from research and development activities under the 1971 Act when undertaken as a part of a Federal reclamation project. Section 7 authorized the Secretary to issue rules and regulations to implement the Act. Section 8 required the Secretary to report to Congress and the President on implementation of the Act. Section 9 defined certain terms used in the Act. Section 10, as amended, established appropriations authorizations for the Act during fiscal year 1972 and authorized appropriations as stated in annual appropriations authorizations during fiscal years 1973 through 1978. Section 11 repealed the 1952 Act. For legislative history of the 1971 Act: see Public Law 92-60 in the 92nd Congress; S. Rept. No. 79 on S.

991; and H.R. Rept. No. 296 on companion bill H.R. 9093. Section 1(a) (2) of the Act of August 2, 1977, amended section 9 of the 1971 Act to authorize an annual appropriations authorization for fiscal year 1978. Extracts from the 1977 Act appear in Volume IV in chronological order.

Sec. 411. [Rules or regulations effective only after transmittal to Congress.]—Any rules and regulations promulgated by the Secretary of the Interior in connection with, or affecting, the administration of any program authorized by this Act or by section 2 of the Act of August 2, 1977 (Public Law 95-84) shall be transmitted to the Speaker of the House of Representatives and the President of the Senate and shall not become effective for thirty days after the date of such transmittal. The thirty day period shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days. (94 Stat. 2032; 42 U.S.C. § 7882)

EXPLANATORY NOTES

1980 Amendment. Section 2(b) (3) of the Act of October 15, 1980 (Public Law 95-467, 94 Stat. 2032), substituted "and regulations promulgated" for "regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed". The 1980 Act does not appear herein. For legislative history of the 1980 Act: see Public Law 96-457 in the 96th Congress; S. Rept. No. 773 on S. 1640; and H.R. Rept. No. 989 on H.R. 5340.

Reference in the Text. Section 2 of the Act of August 2, 1977 (91 Stat. 400), referred to in the text, was amended by subsections 205(a) and (b) of the Act of October 17, 1978. Extracts from the 1977 Act appear in Volume IV in chronological order.

Sec. 412. [Contract and payment authority effective only as provided in advance in appropriations acts.]—Notwithstanding any other provision of this Act, authority to enter into contracts or cooperative agreements and to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts. (92 Stat. 1317; 42 U.S.C. § 7883)

EXPLANATORY NOTE

Legislative History. S. 2704, Public Law 95-467 in the 95th Congress. Reported in Senate from Environment and Public Works, S. Rept. No. 836. Passed Senate May 25, 1978. Passed House, amended, July 11, 1978, in lieu of H.R. 11226. Senate agrees to House amendments with amendments, September 25, 1978. House agrees to Senate amendments October 2, 1978. Companion bill H.R. 11226 reported in House from Interior and Insular Affairs, H.R. Rept. No. 1156. Passed House July 11, 1978.

CONTINUING APPROPRIATIONS ACT, 1979

[Extracts from] A joint resolution making continuing appropriations for the fiscal year 1979, and for other purposes. (Act of October 18, 1978, Public Law 95-482, 92 Stat. 1603)

* * * * *

Sec. 101.

* * * * *

(b) [Projects denied construction funds.]—Such amounts as may be necessary, notwithstanding any other provision of this joint resolution, for the fiscal year ending September 30, 1979, for programs, projects, and activities to the extent and in the manner provided for in the Energy and Water Development Appropriation Act, 1979 (H.R. 12928) as enacted by the Congress: *Provided,* That no funds shall be available for the Narrows Unit, Colorado; * * * Fruitland Mesa, Colorado; Savery-Pot Hook, Colorado and Wyoming; * * * *Provided further,* That no funds shall be available for construction of the Animas-La Plata, Colorado; * * * Uintah Unit and Upalco Unit of the Central Utah Project, Utah: * * * but funds shall be made available to continue planning of these projects: (92 Stat. 1603, 1604)

EXPLANATORY NOTES

Presidential Veto of H.R. 12928. On October 5, 1978, President Carter vetoed the Public Works for Water and Power Development and Energy Research Appropriation Bill, Fiscal Year 1979, H.R. 12928, referred to in the text, on the grounds, among others, that it included construction or planning money for six projects which he had opposed the previous year and construction funds for 27 additional projects in addition to the 26 new starts which he had recommended. The six projects were on the President's so-called "Hit List." The veto was sustained on October 5, 1978 by the failure of the House of Representatives to override it.

Not Codified. The extracts of this Act reprinted 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.J. Res. 1139, Public Law 95-482 in the 95th Congress. Reported in House from Appropriations September 21, 1978; H.R. Rept. No. 95-1599. Passed House September 26, 1978. Reported in Senate from Appropriations October 11, 1978; S. Rept. No. 95-1317. Passed Senate, amended, October 15, 1978. House agreed to Senate amendments October 15, 1978.

H.R. 12928 Incorporated by Reference. Because H.R. 12928 was incorporated by reference into section 101(b) of the Continuing Appropriations Act, 1979, extracts therefrom are set forth herein, as follows:

"H.R. 12928—THE ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1979

"[Extracts from] An act making appropriations for energy and water development for the fiscal year ending September 30, 1979, and for other purposes.

* * * * *

"TITLE I—DEPARTMENT OF ENERGY

"POWER MARKETING ADMINISTRATIONS

"OPERATIONS AND CONSTRUCTION

* * * * *

"[BPA transmission facilities approved.]—*Provided,* That expenditures from the Bonneville Power Administration Fund established by Public Law 93-454 are hereby specifically approved * * * for the construction of facilities to integrate new generating facilities at Colstrip, Montana, and the Bonneville Power Administration transmission grid."

NOTE OF OPINION

1. Authorization by appropriation

Language in an appropriation bill approving the expenditure of funds "for the construction of facilities to integrate new generating facilities at Colstrip, Montana, and the Bonneville Power Administration transmission grid," is sufficiently specific to authorize the Colstrip transmission lines. *County of Missoula v. Johnson,* CV No. 81-35-BU (D. Mont. Jan. 28, 1982), 13 ELR 20382, aff'd mem., 716 F. 2d 910 (9th Cir. 1983).

* * * * *

"TITLE III—DEPARTMENT OF THE INTERIOR

"BUREAU OF RECLAMATION

* * * * *

"CONSTRUCTION AND REHABILITATION

"[Central Oregon Irrigation District rehabilitation program.]—*Provided further,* That of the amount herein appropriated not to exceed $1,189,000 for the Central Oregon Irrigation District shall be available for construction on a rehabilitation and betterment program under the Act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior."

EXPLANATORY NOTE

Provision Repeated. A similar provision appropriating funds to the Central Oregon Irrigation District is contained in the Energy and Water Development Appropriation Act, 1980 (Public Law 96-69, 93 Stat. 444).

Reference in the Text. The Act of October 7, 1949 (63 Stat. 724, 43 U.S.C. § 504), referred to in the text, is the Rehabilitation and Betterment Act. The Act appears in Volume II at page 969.

* * * * *

"[Short title.]—This Act may be cited as the 'Energy and Water Development Appropriation Act, 1979'."

EXPLANATORY NOTES

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 of H.R. 12928. H.R. Rept. No. 95-1247, S. Rept. No. 95-1069. H.R. Rept. No. 95-1490 (conference report). Vetoed October 5, 1978. Veto sustained in House of Representatives October 5, 1978.

RECLAMATION SAFETY OF DAMS ACT OF 1978

An act to authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes. (Act of November 2, 1978, Public Law 95-578, 92 Stat. 2471)

[Sec. 1. Short title.]—This Act shall be cited as the "Reclamation Safety of Dams Act of 1978". (92 Stat. 2471; 43 U.S.C. § 506 note)

Sec. 2. [Secretary authorized to perform modifications to preserve structural safety of Reclamation dams and related facilities.]—In order to preserve the structural safety of Bureau of Reclamation dams and related facilities the Secretary of the Interior is authorized to perform such modifications as he determines to be reasonably required. Said performance of work shall be in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory or supplementary thereto). (92 Stat. 2471; 43 U.S.C. § 506)

NOTE OF OPINION

1. Rehabilitation of Small Reclamation Project Act facilities

Funding authorized under the Reclamation Safety of Dams Act is not available for rehabilitation of dams constructed under the Small Reclamation Projects Act as both the language of the Act and the House Report clearly indicate that such funding is authorized only for dams actually constructed by the Water and Power Resources Service. Facilities constructed under the Small Reclamation Projects Act may, however, obtain loans for project improvement or repair under either the Small Reclamation Projects Act or the Rehabilitation and Betterment Act. Memorandum of Associate Solicitor Leshy to Commissioner, Water and Power Resources Service, April 29, 1980.

Sec. 3. [Construction authorized for dam safety purposes only.]—Construction authorized by this Act shall be for the purposes of dam safety and not for the specific purposes of providing additional conservation storage capacity or of developing benefits over and above those provided by the original dams and reservoirs. Nothing in this Act shall be construed to reduce the amount of project costs allocated to reimbursable purposes heretofore authorized. (92 Stat. 2471; 43 U.S.C. § 507)

Sec. 4. [Reimbursable and nonreimbursable costs.]—(a) Costs heretofore or hereafter incurred in the modification of structures under this Act, the cause of which results from age and normal deterioration of the structure or from nonperformance of reasonable and normal maintenance of the structure by the operating entity shall be considered as project costs and will be allocated to the purposes for which the structure was authorized initially to be constructed and will be reimbursable as provided by existing law.

(b) Costs heretofore, or hereafter incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for

safety purposes shall be nonreimbursable and nonreturnable under the Federal Reclamation law. (92 Stat. 2471; 43 U.S.C. § 508)

NOTE OF OPINION

1. Nonreimbursability of costs

It is clear from the legislative history of the Reclamation Safety of Dams Act that 1) section 4(a) must include within "normal wear and tear" the fact that structures built under an older technology might not last as long as those built today and 2) section 4(b) encompasses only such safety modifications as are necessary to remedy mistakes made at the time the dam was built which presumably would not have been made if there had been adequate hydrologic and seismic data and if the present state-of-the-art criteria deemed necessary for safety purposes were utilized. Consequently, restoration of the Island Park Dam's emergency spillway, which has suffered substantial deterioration since its construction forty years ago, can be treated as a non-reimbursable expense under the Act only if there is a persuasive showing that: 1) such deterioration is not the result of ordinary wear and tear; 2) the proposed modifications are "deemed necessary for safety purposes"; and 3) the proposed repairs are modifications which result from changes in the state-of-the-art criteria. Memorandum of Assistant Solicitor Mauro to Commissioner of Reclamation, June 15, 1979.

Sec. 5. [Authorization of appropriations—Report to Congress—Required finding and technical report.]—There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary, but not to exceed $100,000,000, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: *Provided,* That no funds shall be obligated for carrying out actual construction to modify an existing dam under authority of this Act prior to sixty days (which sixty days shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) from the date that the Secretary has transmitted a report on such existing dam to the Congress. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required, alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification. (92 Stat. 2471; 43 U.S.C. § 509)

Sec. 6. [Salt River Project—Bartlett Dam—Reimbursement of expenses.]—Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to reimburse the Salt River Project for expenses incurred to modify the Bartlett Dam spillway and outfall channel, undertaken for safety of dam purposes pursuant to the provisions of this Act. (92 Stat. 2472)

Sec. 7. [Replacement of American Falls Dam—Payment of costs and contracts.]—Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to pay and discharge that portion of the costs associated with the replacement of the American Falls Dam

which the irrigation spaceholder contracting entities are obligated to pay pursuant to the implementation of the act of December 28, 1973 (87 Stat. 904), to treat such costs as costs incurred under this act, and to enter into contracts with the irrigation spaceholder contracting entities to accomplish the payment and discharge of such costs. (92 Stat. 2472)

EXPLANATORY NOTES

Reference in the Text. The Act of December 28, 1973 (Public Law 93-206, 87 Stat. 904), referred to in the text, authorized the Secretary to enter into agreements with the American Falls Reservoir District or other agency representing the spaceholders to finance and provide for the construction of a dam and related facilities to replace the existing American Falls Dam, Minidoka Project, Idaho. The 1973 Act appears in Volume IV in chronological order.

Cross Reference, Appropriation Act. A provision in the Energy and Water Development Appropriations Act, 1980 (Public Law 96-69, Act of September 25, 1979) appropriated funds to pay costs to irrigation spaceholder contracting entities for American Falls Dam, such funds to be nonreimbursable in accordance with the terms of the Reclamation Safety of Dams Act. The provision appears in Volume IV in chronological order.

Sec. 8. [Westlands Water District—Temporary water service contracts—Congressional oversight accomplished.]—The Congress hereby finds that the oversight provided for in section 3 of Public Law 95-46 has been accomplished with respect to the three temporary water service contracts between the United States and the Westlands Water District, as forwarded to Congress on October 4, 1978. (91 Stat. 227)

EXPLANATORY NOTE

Reference in the Text. Section 3 of the Act of June 15, 1977 (Public Law 95-46, 91 Stat. 225), referred to in the text, prohibited the Secretary from approving any temporary water service contract with the Westlands Water District extending more than 180 days beyond December 31, 1977, prior to its submission to Congress for a period of not more than 90 days. The 1977 Act appears in Volume IV in chronological order.

Sec. 9. [Secretary shall conduct feasibility study of project to rehabilitate and improve Santa Cruz Dam and Reservoir.]—(a) The Secretary of the Interior, after October 1, 1979, shall make a full investigation and study to determine the feasibility of carrying out a project to rehabilitate and improve the existing Santa Cruz Dam and Reservoir, Santa Cruz Irrigation District, New Mexico, including—

(1) repairing and stabilizing the face of the dam;

(2) enlarging spillway capacity to insure the safety of the dam; and

(3) raising the dam to increase the storage capacity of Santa Cruz Reservoir.

(b) In carrying out the investigation and study authorized by subsection (a) the Secretary shall give full consideration to the potential for developing the Santa Cruz Dam and Reservoir as a unit or part of the San Juan-Chama project.

(c) The Secretary shall submit to the President and the Congress as soon as practicable the results of such investigation together with his recommendations.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this bill. (92 Stat. 2472)

Sec. 10. The fourth sentence of section 201 of the Act of September 30, 1968 (Public Law 90-537) is amended by striking out "from the date of this Act" and by inserting in lieu thereof the following: "from the date of the enactment of the Reclamation Safety of Dams Act of 1978." (92 Stat. 2472; 43 U.S.C. § 1511)

EXPLANATORY NOTE

Reference in the Text. The Act of September 30,1968 (Public Law 90-537, 82 Stat. 885, 43 U.S.C. § 1501 et seq.), referred to in the text, is the Colorado River Basin Project Act. The fourth sentence of section 201 thereof, as amended by section 10, above, prohibits the Secretary from undertaking reconnaissance studies of any plan for the importation of water into the Colorado River Basin from any other natural river drainage basin lying outside the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are in the natural drainage basin of the Colorado River for a period of 10 years from the date of enactment of this act, i.e., until November 2, 1988. The Colorado River Basin Project Act of 1968 appears in Volume IV in chronological order.

Sec. 11. [Tualatin Project—Secretary directed to make necessary repairs on Scoggins Valley Road.]—The Secretary of the Interior is hereby directed, notwithstanding the terms of the Contract Numbers 14-06-00-7174, to make necessary repairs on the Scoggins Valley Road around Henry Hagg Lake, Oregon, at Federal expense pursuant to the authority of Public Law 89-596 which authorized the construction, operation and maintenance of the Tualatin Reclamation Project in Oregon. (92 Stat. 2473)

EXPLANATORY NOTES

Not Codified. Sections 6, 7, 8, 9, and 11 of this Act are not codified in the U.S. Code.

Reference in the Text. Public Law 89-596 (Act of September 20, 1966, 80 Stat. 822), referred to in the text, appears in Volume III at page 1899.

Legislative History. S. 2820, Public Law 95-578 in the 95th Congress. Reported in Senate from Energy and Natural Resources May 12, 1978; S. Rept. No. 95-810. Passed Senate July 28, 1978. H.R. 11153 reported in House from Interior and Insular Affairs May 10, 1978; H.R. Rept. No. 95-1125. Passed House October 14, 1978. Passage vacated and S. 2820, amended to contain the text of H.R. 11153, passed in lieu thereof October 14, 1978. Senate concurs in House amendment October 15, 1978.

AMEND FRYINGPAN-ARKANSAS PROJECT

[Extract from] An act to validate certain land conveyances, and for other purposes. (Act of November 3, 1978, Public Law 95-586, 92 Stat. 2485)

* * * * *

TITLE IX—FRYINGPAN-ARKANSAS RECLAMATION PROJECT

Sec. 901. [Amendment to project authorization to include description of proposal as contained in April 16, 1975 final EIS.]—Subsection (a) of section 1 of the Act of August 16, 1962 (76 Stat. 389; 43 U.S.C. 616 et seq.), is amended by inserting after the words "Ruedi Dam and Reservoir, Colorado," the words "and as further modified and described in the description of the proposal contained in the final environmental statement for said project, dated April 16, 1975,". (92 Stat. 2493)

Sec. 902. [Amendment to require compliance with State laws relating to establishment of minimum streamflows.]—Subsection (e) of section 5 of such Act is amended by inserting after the word "therein" a comma and the words "including those laws of the State of Colorado relating to the establishment of minimum streamflows for the reasonable protection of the natural environment, to the extent that such laws are not inconsistent with the operating principles identified in subsection 3(a) of this Act". (92 Stat. 2493)

Sec. 903. [Amendment to require operation pursuant to diversion rates established under State law—Proviso regarding diversions from Hunter Creek watershed.]—Subsection (a) of section 3 of such Act is amended by inserting after the word "Congress" a semicolon and the words "and shall be further operated pursuant to diversion rates established under the laws of the State of Colorado: *Provided,* That the rate of project diversions from the Hunter Creek watershed shall not exceed an aggregate of 270 cubic feet of water per second of time. Waters so diverted may be utilized for all authorized project purposes as set forth in section 1(a) of this Act. Such waters, exclusive of the amount diverted for Roaring Fork exchanges provided for in subparagraph 9(1)(c) and paragraph 11 of the above referenced operating principles shall become part of the project water supply as limited by subparagraph 9(1)(a) of the above referenced operating principles. No diversions shall be made from the Hunter Creek watershed which will reduce the remaining streamflows at the points of diversion to less than 4 cubic feet per second on No Name Creek, 5 cubic feet per second on Midway Creek, and 12 cubic feet per second on Hunter Creek". (92 Stat. 2493)

EXPLANATORY NOTES

Not Codified. Sections 901-903 of this Act are not codified in the U.S. Code because the Act of August 16, 1962, which this Act amends, was omitted from the 1976 and sub-

sequent editions of the U.S. Code as having limited applicability.

Reference in the Text. The Act of August 16, 1962 (Public Law 87-590, 76 Stat. 389), referred to in and amended by the text, appears in Volume III at page 1670.

Editor's Note, Annotations. Annotations of opinions are found in Supplement I under "August 16, 1962—Fryingpan-Arkansas Project."

Legislative History. H.R. 7971, Public Law 95-586 in the 95th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 95-1008. Reported in Senate from Energy and Natural Resources; S. Rept. No. 95-1287. Passed House April 18, 1978. Passed Senate, amended, October 12, 1978. House concurs in Senate amendments October 14, 1978.

FISH AND WILDLIFE IMPROVEMENT ACT

[Extracts from] An Act to improve the administration of fish and wildlife programs, and for other purposes. (Act of November 8, 1978, Public Law 95-616, 92 Stat. 3110)

* * * * *

Sec. 3 (a) [Fish and wildlife law enforcement authority—Training programs—Authorization of appropriations—Reimbursement from States authorized—Agreements to utilize personnel services and facilities of other Federal and State agencies—Disposal of abandoned or forfeited property—Prior agreements or delegations not invalid—Law enforcement operations.]—(1) In order to provide for and encourage training, research, and development for the purpose of improving fish and wildlife law enforcement and developing new methods for the prevention, detection, and reduction of violation of fish and wildlife laws, and the apprehension of violators of such laws, the Secretary of the Interior and the Secretary of Commerce may each—

(A) establish and conduct national training programs to provide, at the request of any State, training for State fish and wildlife law enforcement personnel;

(B) develop new or improved approaches, techniques, systems, equipment, and service to improve and strengthen fish and wildlife law enforcement; and

(C) assist in conducting, at the request of any appropriate State official, local or regional training programs for the training of State fish and wildlife law enforcement personnel.

Such training programs shall be conducted to the maximum extent practicable through established programs.

(2) There are authorized to be appropriated beginning with fiscal year 1980 such funds as may be necessary to carry out the purposes of subsection (b), and the Secretary of the Interior and the Secretary of Commerce may each require reimbursement from the States for expenditures made pursuant to subsections (b)(1) (A) and (C).

(b) Notwithstanding any other provision of law, the Secretary of the Interior and the Secretary of Commerce may each utilize by agreement, with or without reimbursement, the personnel, services and facilities of any other Federal or State agency to the extent he deems it necessary and appropriate for effective enforcement of any Federal or State laws on lands, waters, or interests therein under his jurisdiction which are administered or managed for fish and wildlife purposes and for enforcement of any laws administered by him relating to fish and wildlife. Persons so designated by either Secretary, who are not employees of another Federal agency—

(1) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those

relating to hours of work, competitive examination, rates of compensation, and Federal employee benefits, but may be considered eligible for compensation for work injuries under subchapter III of chapter 81 of title 5, United States Code;

(2) shall be considered to be investigative or law enforcement officers of the United States for the purposes of the tort claim provisions of title 28, United States Code;

(3) may, to the extent specified by either Secretary, search, seize, arrest, and exercise any other law enforcement functions or authorities under Federal laws relating to fish and wildlife, where such authorities are made applicable by this or any other law to employees, officers, or other persons designated or employed by either Secretary; and

(4) shall be considered to be officers or employees of the Department of the Interior or the Department of Commerce, as the case may be, within the meaning of sections 111 and 1114 of title 18, United States Code.

(c) Notwithstanding any other provision of law, all fish, wildlife, plants, or any other items abandoned or forfeited to the United States under any laws administered by the Secretary of the Interior or the Secretary of Commerce relating to fish, wildlife, or plants, shall be disposed of by either Secretary in such a manner as he deems appropriate (including, but not limited to, loan, gift, sale, or destruction).

(d) Nothing in this section shall be construed to invalidate any law enforcement agreement or delegation made by the Secretary of the Interior or the Secretary of Commerce with respect to fish and wildlife matters prior to the date of enactment of this Act.

(e) With respect to any undercover or other enforcement operation which is necessary for the detection and prosecution of violations of any laws administered by the United States Fish and Wildlife Service or the National Marine Fisheries Service relating to fish, wildlife, or plants, the Secretary of the Interior or the Secretary of Commerce may, notwithstanding any other provision of law—

(1) direct the advance of funds which may be deposited in commercial banks or other financial institutions;

(2) use appropriations for payment for information, rewards, or evidence concerning violations, without reference to any rewards to which such persons may otherwise be entitled by law, and any moneys subsequently recovered shall be reimbursed to the current appropriation; and

(3) use appropriations to establish or acquire proprietary corporations or business entities as part of an undercover operation, operate such corporations or business entities on a commercial basis, lease space and make other necessary expenditures, and use the proceeds from such undercover operations to offset necessary and reasonable expenses incurred in such operations: *Provided,* That at the conclusion of each such operation the proceeds shall be deposited in the Treasury of the United States as miscellaneous receipts. (92 Stat. 3110; Act of December 31, 1982, 96 Stat. 2006; 16 U.S.C. § 742l)

EXPLANATORY NOTES

1982 Amendment. Section 7 of the Act of December 31, 1982 (Public Law 97-396, 96 Stat. 2006) amended section 3 by adding subsection (e). The 1982 Act does not appear herein.

Reference in the Text. Subchapter III of chapter 81 of Title 5 of the U.S. Code, referred to in section 3 (b) (1) of the text, governs compensation for work injuries to law enforcement officers not employed by the United States. Subchapter III does not appear herein.

Reference in the Text. The tort claim provisions of Title 28 of the U.S. Code, referred to in section 3(b) (2) of the text, are found in chapter 171 of that Title. Extracts from Title 28 appear in Volume II beginning at page 884.

Reference in the Text. Sections 111 and 1114 of Title 18 of the U.S. Code, referred to in section 3(b) (4) of the text, govern the imposition of criminal penalties against those individuals who commit acts of violence against law enforcement officers working under the authority of the United States Government. Sections 111 and 1114 do not appear herein.

* * * * *

Sec. 10. (a) [Act of August 27, 1954 amended—Water for waterfowl purposes to be delivered on a non-reimbursable basis—Obligations of contracting public organizations or agencies—Contractors' rights revert to Secretary in case of default—Covenants restricting use of lands.]—The Act of August 27, 1954 (68 Stat. 879) is amended by deleting the last sentence of section 6 and inserting in lieu thereof the following: "If and when available, such water shall be delivered from the Central Valley project to the contracting entity, and the cost of furnishing the water shall not be reimbursable or returnable under the Federal reclamation laws: *Provided,* That, in order for the delivery of such water to continue on a nonreimbursable or nonreturnable basis—

"(a) the public organizations or agencies contracting with the Secretary of the Interior, excluding the State of California, shall deliver annually to the United States Fish and Wildlife Service (hereinafter referred to as the 'Service'), at no cost to the United States, not less than three thousand five hundred acre-feet of water during the period October 1 through November 30, inclusive, and not less than four thousand acre-feet of water during the period May 1 through September 30, inclusive, if available: *Provided,* That such amounts of water and times of delivery may be changed upon approval of the Secretary of the Interior;

"(b) the public organizations or agencies, excluding the State of California, shall construct, operate, and maintain any water conveyance facilities necessary to deliver the water referred to in section 6(a) of this Act to a point or points within the boundaries of such public organization or agency as designated by the Service, or to such points as may be mutually agreed upon by the public organization or agency and the Service. The Service shall be responsible for delivering the water from such point or points to appropriate locations within lands under its jurisdiction;

"(c) any contract entered into by the Secretary of the Interior and any public organization or agency pursuant to this Act shall provide that in the event the public organization or agency for any reason fails to carry

out the obligations imposed upon it by said contract or by this Act, the rights of use of any facilities referred to in subsection (b), and the rights to all water contracted for by the organization or agency pursuant to this Act shall revert to the Secretary of the Interior for migratory waterfowl purposes in accordance with the laws of the State of California; and

"(d) in accordance with existing or future contracts, the use of lands located within the boundaries of the public organizations or agencies shall be restricted by covenants requiring that such lands be used only for the purpose of waterfowl and wildlife habitat conservation or other uses as may be mutually agreed upon by the public organizations or agencies and the Service.".

(b) [Secretary authorized to negotiate contract amendments.]—The Act of August 27, 1954 (68 Stat. 879), is further amended by adding at the end thereof the following new section:

"Sec. 8. The Secretary is hereby authorized to negotiate amendments to existing contracts to conform said contracts to the provisions of this Act.". (92 Stat. 3115; 16 U.S.C. § 695i)

EXPLANATORY NOTES

Reference in the Text. Section 6 of the Act of August 27, 1954 (68 Stat. 879), referred to in and amended by subsection (b) of the text, authorizes the Secretary of the Interior to deliver water to public organizations or agencies for waterfowl purposes in the San Joaquin Valley, California. The 1954 Act appears in Volume II at page 1191.

Editor's Note, Annotations. Annotations of opinions interpreting the Act of August 27, 1954, amended by subsection (b) of the text, are found in Volume II at page 1191.

Legislative History. H.R. 2329, Public Law 95-616 in the 95th Congress. Reported in House from Merchant Marine and Fisheries; H.R. Rept. No. 95-29. Considered and failed of passage in House February 28, 1977. Passed House January 19, 1978. Reported in Senate from Environment and Public Works; S. Rept. No. 95-1175. Passed Senate, amended, September 25, 1978. Passage vitiated, reconsidered and passed Senate, amended, September 26, 1978. House and Senate agree to conference report October 15, 1978; House conference report H.R. Rept. No. 95-1730, Senate conference report S. Rept. No. 95-1277.

PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

An act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics. (Act of November 9, 1978, Public Law 95-617, 92 Stat. 3117)

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Utility Regulatory Policies Act of 1978". (92 Stat. 3117; 16 U.S.C. § 2601 note)

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
Sec. 4. Relationship to antitrust laws.

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

Subtitle A—General Provisions

Sec. 101. Purposes.
Sec. 102. Coverage.
Sec. 103. Federal contracts.

Subtitle B—Standards for Electric Utilities

Sec. 111. Consideration and determination respecting certain ratemaking standards.
Sec. 112. Obligations to consider and determine.
Sec. 113. Adoption of certain standards.
Sec. 114. Lifeline rates.
Sec. 115. Special rules for standards.
Sec. 116. Reports respecting standards.
Sec. 117. Relationship to State law.

Subtitle C—Intervention and Judicial Review

Sec. 121. Intervention in proceedings.
Sec. 122. Consumer representation.
Sec. 123. Judicial review and enforcement.
Sec. 124. Prior and pending proceedings.

Subtitle D—Administrative Provisions

Sec. 131. Voluntary guidelines.
Sec. 132. Responsibilities of Secretary of Energy.
Sec. 133. Gathering information on costs of service.
Sec. 134. Relationship to other authority.

* * * * *

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

Sec. 201. Definitions.
Sec. 202. Interconnection.

Sec. 203. Wheeling.
Sec. 204. General provisions regarding certain interconnection and wheeling authority.
Sec. 205. Pooling.
Sec. 206. Continuance of service.
Sec. 207. Consideration of proposed rate increases.
Sec. 208. Automatic adjustment clauses.
Sec. 209. Reliability.
Sec. 210. Cogeneration and small power production.
Sec. 211. Interlocking directorates.
Sec. 212. Public participation before Federal Energy Regulatory Commission.
Sec. 213. Conduit hydroelectric facilities.
Sec. 214. Prior action; effect on other authorities.

* * * * *

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

Sec. 401. Establishment of program.
Sec. 402. Loans for feasibility studies.
Sec. 403. Loans for project costs.
Sec. 404. Loan rates and repayment.
Sec. 405. Simplified and expeditious licensing procedures.
Sec. 406. New impoundments.
Sec. 407. Authorizations.
Sec. 408. Definitions.

* * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 602. Seasonal diversity electricity exchange.

* * * * *

EXPLANATORY NOTES

Popular Name. This Act is frequently referred to as "PURPA".

Amendments to the Federal Power Act. Various sections of Title II of PURPA amend the Federal Power Act. Section 201 adds definitions of the following terms to section 3: small power production facility; cogeneration facility; Federal power marketing agency; evidentiary hearings and evidentiary proceeding; State regulatory authority; and electric utility. Sections 202, 203, and 204 add sections 210, 211 and 212. Section 206 adds subsection 202 (g). Section 213 adds section 30. These amendments appear in Supplement I under "Federal Water Power Act—June 10, 1920" or "Federal Power Act—August 26, 1935", as appropriate. Sections 207, 208, 211 and 212 of PURPA also amend the Federal Power Act, but these amendments do not appear in Supplement I.

SEC. 2. FINDINGS.

The Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority under the Constitution to regulate interstate commerce require—

(1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers,

(2) a program to improve the wholesale distribution of electric energy, the reliability of electric service, the procedures concerning consideration of wholesale rate applications before the Federal Energy Regulatory Commission, the participation of the public in matters before the Commission, and to provide other measures with respect to the regulation of the wholesale sale of electric energy,

(3) a program to provide for the expeditious development of hydroelectric potential at existing small dams to provide needed hydroelectric power,

(4) a program for the conservation of natural gas while insuring that rates to natural gas consumers are equitable,

(5) a program to encourage the development of crude oil transportation systems, and

(6) the establishment of certain other authorities as provided in title VI of this Act. (92 Stat. 3119; 16 U.S.C. § 2601)

SEC. 3. DEFINITIONS.

As used in this Act, except as otherwise specifically provided—

(1) The term "antitrust laws" includes the Sherman Antitrust Act (15 U.S.C. 1 and following), the Clayton Act (15 U.S.C. 12 and following), the Federal Trade Commission Act (15 U.S.C. 14 and following), the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A).

(2) The term "class" means, with respect to electric consumers, any group of such consumers who have similar characteristics of electric energy use.

(3) The term "Commission" means the Federal Energy Regulatory Commission.

(4) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(5) The term "electric consumer" means any person, State agency, or Federal agency, to which electric energy is sold other than for purposes of resale.

(6) The term "evidentiary hearing" means—

(A) in the case of a State agency, a proceeding which (i) is open to the public, (ii) includes notice to participants and an opportunity for such participants to present direct and rebuttal evidence and to cross-examine witnesses, (iii) includes a written decision, based upon evidence appearing in a written record of the proceeding, and (iv) is subject to judicial review;

(B) in the case of a Federal agency, a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code; and

(C) in the case of a proceeding conducted by any entity other than a State or Federal agency, a proceeding which conforms, to the extent appropriate, with the requirements of subparagraph (A).

(7) The term "Federal agency" means an executive agency (as defined in section 105 of title 5 of the United States Code).

(8) The term "load management technique" means any technique (other than a time-of-day or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including ripple or radio control mechanisms, and other types of interruptible electric service, energy storage devices, and load-limiting devices.

(9) The term "nonregulated electric utility" means any electric utility other than a State regulated electric utility.

(10) The term "rate" means (A) any price, rate, charge, or classification made, demanded, observed, or received with respect to sale of electric energy by an electric utility to an electric consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of electric energy to an electric consumer.

(11) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(12) The term "rate schedule" means the designation of the rates which an electric utility charges for electric energy.

(13) The term "sale" when used with respect to electric energy includes any exchange of electric energy.

(14) The term "Secretary" means the Secretary of Energy.

(15) The term "State" means a State, the District of Columbia, and Puerto Rico.

(16) The term "State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

(17) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(18) The term "State regulated electric utility" means any electric utility with respect to which a State regulatory authority has ratemaking authority. (92 Stat. 3119; 16 U.S.C. § 2602)

EXPLANATORY NOTE

Reference in the Text; Popular Name. The Act of June 19, 1936, referred to in section 3 (1), is commonly referred to as the Robinson-Patman Act. The Act does not appear herein.

SEC. 4. RELATIONSHIP TO ANTITRUST LAWS.

Nothing in this Act or in any amendment made by this Act affects—

(1) the applicability of the antitrust laws to any electric utility or gas utility (as defined in section 302), or

(2) any authority of the Secretary or of the Commission under any other provision of law (including the Federal Power Act and the Natural Gas Act) respecting unfair methods of competition or anticompetitive acts or practices. (92 Stat. 3120; 16 U.S.C. § 2603)

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

Subtitle A—General Provisions

SEC. 101. PURPOSES.

The purposes of this title are to encourage—

(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and

(3) equitable rates to electric consumers. (92 Stat. 3121; 16 U.S.C. § 2611)

SEC. 102. COVERAGE.

(a) VOLUME OF TOTAL RETAIL SALES.—This title applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(b) EXCLUSION OF WHOLESALE SALES—The requirements of this title do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

(c) LIST OF COVERED UTILITIES.—Before the beginning of each calendar year, the Secretary shall publish a list identifying each electric utility to which this title applies during such calendar year. Promptly after publication of such list each State regulatory authority shall notify the Secretary of each electric utility on the list for which such State regulatory authority has ratemaking authority. (92 Stat. 3121; 16 U.S.C. § 2612)

SEC. 103. FEDERAL CONTRACTS.

Notwithstanding the limitation contained in section 102 (b), no contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into or renewed after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any requirement of subtitle B or C. Any provision in any such contract which has such effect shall be null and void. (92 Stat. 3121; 16 U.S.C. § 2613)

Subtitle B—Standards For Electric Utilities

SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.

(a) CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) and make a determination concerning

whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) PROCEDURAL REQUIREMENTS FOR CONSIDERATION AND DETERMINATION.—(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be—

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112 (a), and in sections 121 and 122, the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) IMPLEMENTATION.—(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law—

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(d) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) COST OF SERVICE.—Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115 (a).

(2) DECLINING BLOCK RATES.—The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such

utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period.

(3) TIME-OF-DAY RATES.—The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115 (b).

(4) SEASONAL RATES.—The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility.

(5) INTERRUPTIBLE RATES.—Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member.

(6) LOAD MANAGEMENT TECHNIQUES.—Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will—

(A) be practicable and cost-effective, as determined under section 115 (c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility. (92 Stat. 3121; 16 U.S.C. § 2621)

NOTE OF OPINION

1. Rate design

Neither section 7 of the Bonneville Project Act nor the Public Utility Regulatory Policies Act impose a cost-of-service standard for the design of wholesale power rates for the Bonneville Power Administration. Although costs must be considered, other factors may be considered as well. *Pacific Power & Light Co. v. Duncan,* 499 F. Supp. 672, 682-83 (D. Ore. 1980).

SEC. 112. OBLIGATIONS TO CONSIDER AND DETERMINE.

(a) REQUEST FOR CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility may undertake the consideration and make the determination referred to in section 111 with respect to any standard established by section 111 (d) in any proceeding respecting the rates of the electric utility. Any participant or intervenor (including an intervenor referred to in section 121) in such a proceeding may request, and shall obtain, such consideration and determination in such proceeding. In undertaking such consideration and making such determination in any such proceeding with respect to the application to any electric utility of any standard established by section 111 (d), a State regulatory authority (with respect to an electric utility for which it has ratemaking

authority) or nonregulated electric utility may take into account in such proceeding—

(1) any appropriate prior determination with respect to such standard—

(A) which is made in a proceeding which takes place after the date of the enactment of this Act, or

(B) which was made before such date (or is made in a proceeding pending on such date) and complies, as provided in section 124, with the requirements of this title; and

(2) the evidence upon which such prior determination was based (if such evidence is referenced in such proceeding).

(b) TIME LIMITATIONS.—(1) Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by section 111 (d).

(2) Not later than three years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by section 111 (d).

(c) FAILURE TO COMPLY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 111 with respect to each standard established by section 111 (d) in the first rate proceeding commenced after the date three years after the date of enactment of this Act respecting the rates of such utility if such State regulatory authority or nonregulated electric utility has not, before such date, complied with subsection (b) (2) with respect to such standard. (92 Stat. 3122; 16 U.S.C. § 2622)

SEC. 113. ADOPTION OF CERTAIN STANDARDS.

(a) ADOPTION OF STANDARDS.—Not later than two years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall—

(1) adopt the standards established by subsection (b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b) (4) if, and to the extent, such authority or nonregulated electric utility determines that

such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law.

(b) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) MASTER METERING.—To the extent determined appropriate under section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this title.

(2) AUTOMATIC ADJUSTMENT CLAUSES.—No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e).

(3) INFORMATION TO CONSUMERS.—Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f).

(4) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE.—No electric utility may terminate electric service to any electric consumer except pursuant to procedures described in section 115(g).

(5) ADVERTISING.—No electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h).

(c) PROCEDURAL REQUIREMENTS.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, within the two-year period specified in subsection (a), shall (1) adopt, pursuant to subsection (a), each of the standards established by subsection (b) or, (2) with respect to any such standard which is not adopted, such authority or nonregulated electric utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public. (92 Stat. 3123; 16 U.S.C. § 2623)

SEC. 114. LIFELINE RATES.

(a) LOWER RATES.—No provision of this title prohibits a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or a nonregulated electric utility from fixing, approving, or allowing to go into effect a rate for essential needs (as defined by the State regulatory authority or by the nonregulated electric utility, as the case may be) of residential electric consumers which is lower than a rate under the standard referred to in section 111 (d) (1).

(b) DETERMINATION.—If any State regulated electric utility or nonregulated electric utility does not have a lower rate as described in subsection

(a) in effect two years after the date of the enactment of this Act, the State regulatory authority having ratemaking authority with respect to such State regulated electric utility or the nonregulated electric utility, as the case may be, shall determine, after an evidentiary hearing, whether such a rate should be implemented by such utility.

(c) PRIOR PROCEEDINGS.—Section 124 shall not apply to the requirements of this section. (92 Stat. 3124; 16 U.S.C. § 2624)

SEC. 115. SPECIAL RULES FOR STANDARDS.

(a) COST OF SERVICE.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111 (d) (1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated electric utility). Such methods shall to the maximum extent practicable—

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence attributable to differences in customer demand, and energy components of cost. In prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if—

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers.

(b) TIME-OF-DAY RATES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111 (d) (3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates.

(c) LOAD MANAGEMENT TECHNIQUES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if—

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique.

(d) MASTER METERING.—Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if—

(1) there is more than one unit in such building,

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

(e) AUTOMATIC ADJUSTMENT CLAUSES.—(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if—

(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

(B) such clause is reviewed not less often than every two years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies.

(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other items).

(3) As used in this subsection and section 113 (b), the term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

(f) INFORMATION TO CONSUMERS.—(1) For purposes of the standard for information to consumers established by section 113 (b) (3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer—

(A) not later than sixty days after the date of commencement of service to such consumer or ninety days after the standard established by section 113 (b) (3) is adopted with respect to such electric utility, whichever last occurs, and

(B) not later than thirty days (sixty days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility).

(2) For purposes of the standard for information to consumers established by section 113 (b) (3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year—

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) an identification of any classes whose rates are not summarized.

Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility).

(g) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE.—The procedures for termination of service referred to in section 113(b)(4) are procedures prescribed by the State regulatory authority (with respect to electric utilities for which it has ratemaking authority) or by the nonregulated electric utility which provide that—

(1) no electric service to an electric consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to an electric consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(h) ADVERTISING.—(1) For purposes of this section and section 113(b)(5)—

(A) The term "advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this subsection and section 113(b)(5), the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon. (92 Stat. 3125; 16 U.S.C. § 2625)

SEC. 116. REPORTS RESPECTING STANDARDS.

(a) STATE AUTHORITIES AND NONREGULATED UTILITIES.—Not later than one year after the date of the enactment of this Act and annualy thereafter for ten years, each State regulatory authority (with respect to each State regulated electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by sections 111(d) and 113(b). Such report shall include a summary of the determinations made and actions taken with respect to each such standard on a utility-by-utility basis.

(b) SECRETARY.—Not later than eighteen months after the date of the enactment of this Act and annually thereafter for ten years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a).

(2) his analysis of such reports, and

(3) his actions under this title, and his recommendations for such further Federal actions, including any legislation, regarding retail electric utility rates (and other practices) as may be necessary to carry out the purposes of this title. (92 Stat. 3128; 16 U.S.C. § 2626)

SEC. 117. RELATIONSHIP TO STATE LAW.

(a) REVENUE AND RATE OF RETURN.—Nothing in this title shall authorize or require the recovery by an electric utility of revenues, or of a

rate of return, in excess of, or less than, the amount of revenues or the rate of return determined to be lawful under any other provision of law.

(b) STATE AUTHORITY.—Nothing in this title prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subtitle.

(c) FEDERAL AGENCIES.—With respect to any electric utility which is a Federal agency, and with respect to the Tennessee Valley Authority when it is treated as a State regulatory authority as provided in section 3 (17), any reference in section 111 or 113 to State law shall be treated as a reference to Federal law. (92 Stat. 3128; 16 U.S.C. § 2627)

Subtitle C—Intervention and Judicial Review

SEC. 121. INTERVENTION IN PROCEEDINGS.

(a) AUTHORITY TO INTERVENE AND PARTICIPATE.—In order to initiate and participate in the consideration of one or more of the standards established by subtitle B or other concepts which contribute to the achievement of the purposes of this title, the Secretary, any affected electric utility, or any electric consumer of an affected electric utility may intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design which is conducted by a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by a nonregulated electric utility.

(b) ACCESS TO INFORMATION.—Any intervenor or participant in a proceeding described in subsection (a) shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his intervention or participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State regulatory authority (in the case of proceedings concerning electric utilities for which it has ratemaking authority) or by the nonregulated electric utility (in the case of a proceeding conducted by a nonregulated electric utility).

(c) EFFECTIVE DATE; PROCEDURES.—Any intervention or participation under this section, in any proceeding commenced before the date of the enactment of this Act but not completed before such date, shall be permitted under this section only to the extent such intervention or participation is timely under otherwise applicable law. (92 Stat. 3128; 16 U.S.C. § 2631)

SEC. 122. CONSUMER REPRESENTATION.

(a) COMPENSATION FOR COSTS OF PARTICIPATION OR INTERVENTION.—(1) If no alternative means for assuring representation of electric consumers is adopted in accordance with subsection (b) and if an electric consumer of an electric utility substantially contributed to the approval, in whole or in part, of a position advocated by such consumer in a proceeding concerning such utility, and relating to any standard set forth in subtitle B, such utility shall be liable to compensate such consumer (pursuant to paragraph (2)) for reasonable attorney's fees, expert witness fees, and other

reasonable costs incurred in preparation and advocacy of such position in such proceeding (including fees and costs of obtaining judicial review of any determination made in such proceeding with respect to such position).

(2) A consumer entitled to fees and costs under paragraph (1) may collect such fees and costs from an electric utility by bringing a civil action in any State court of competent jurisdiction, unless the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility) or nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has adopted a reasonable procedure pursuant to which such authority or nonregulated electric utility—

(A) determines the amount of such fees and costs, and

(B) includes an award of such fees and costs in its order in the proceeding.

(3) The procedure adopted by such State regulatory authority or nonregulated utility under paragraph (2) may include a preliminary proceeding to require that—

(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and

(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation.

(b) ALTERNATIVE MEANS.—Compensation shall not be required under subsection (a) if the State, the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility), or the nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has provided an alternative means for providing adequate compensation to persons—

(1) who have, or represent, an interest—

(A) which would not otherwise be adequately represented in the proceeding, and

(B) representation of which is necessary for a fair determination in the proceeding, and

(2) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding).

(c) TRANSCRIPTS.—The State regulatory authority or nonregulated electric utility, as the case may be shall make transcripts of the proceeding available, at cost of reproduction, to parties or intervenors in any rate-making proceeding, or other regulatory proceeding relating to rates or rate design, before a State regulatory authority or nonregulated electric utility.

(d) FEDERAL AGENCIES.—Any claim under this section against any Federal agency shall be subject to the availability of appropriated funds.

(e) RIGHTS UNDER OTHER AUTHORITY.—Nothing in this section affects or restricts any rights of any participant or intervenor in any proceeding under any other applicable law or rule of law. (92 Stat. 3129; 16 U.S.C. § 2632)

SEC. 123. JUDICIAL REVIEW AND ENFORCEMENT.

(a) LIMITATION OF FEDERAL JURISDICTION.—Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of subtitle A or B or of this subtitle except for—

(1) an action over which a court of the United States has jurisdiction under subsection (b) or (c) (2); and

(2) review of any action in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28 of the United States Code.

(b) ENFORCEMENT OF INTERVENTION RIGHT.—(1) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene and participate under section 121(a), and such court shall have jurisdiction to grant appropriate relief.

(2) If any electric utility or electric consumer having a right to intervene under section 121(a) is denied such right by any State court, such electric utility or electric consumer may bring an action in the appropriate United States district court to require the State regulatory authority or nonregulated electric utility to permit such intervention and participation, and such court shall have jurisdiction to grant appropriate relief.

(3) Nothing in this subsection prohibits any person bringing any action under this subsection in a court of the United States from seeking review and enforcement at any time in any State court of any rights he may have with respect to any motion to intervene or participate in any proceeding.

(c) REVIEW AND ENFORCEMENT.—(1) Any person (including the Secretary) may obtain review of any determination made under subtitle A or B or under this subtitle with respect to any electric utility (other than a utility which is a Federal agency) in the appropriate State court if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. Any person (including the Secretary) may bring an action to enforce the requirements of this title in the appropriate State court, except that no such action may be brought in a State court with respect to a utility which is a Federal agency. Such review or action in a State court shall be pursuant to any applicable State procedures.

(2) Any person (including the Secretary) may obtain review in the appropriate court of the United States of any determination made under subtitle A or B or this subtitle by a Federal agency if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if otherwise applicable law permits such review. Such court shall have jurisdiction to grant appropriate relief. Any person (including the Secretary) may bring an action to enforce the requirements of subtitle A or B or this

subtitle with respect to any Federal agency in the appropriate court of the United States and such court shall have jurisdiction to grant appropriate relief.

(3) In addition to his authority to obtain review under paragraph (1) or (2), the Secretary may also participate as an amicus curiae in any review by any court of an action arising under the provisions of subtitle A or B or this subtitle.

(d) OTHER AUTHORITY OF THE SECRETARY.—Nothing in this section prohibits the Secretary from—

(1) intervening and participating in any proceeding, or

(2) intervening and participating in any review by any court of any action under section 204 of the Energy Conservaton and Production Act. (92 Stat. 3130; 16 U.S.C. § 2633)

SEC. 124. PRIOR AND PENDING PROCEEDINGS.

For purposes of subtitles A and B, and this subtitle, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before the date of the enactment of this Act and actions taken before such date in such proceedings shall be treated as complying with the requirements of subtitles A and B, and this subtitle if such proceedings and actions substantially conform to such requirements. For purposes of subtitles A and B, and this subtitle, any such proceeding or action commenced before the date of enactment of this Act, but not completed before such date, shall comply with the requirements of subtitles A and B, and this subtitle, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 121(c). (92 Stat. 3131; 16 U.S.C. § 2634)

Subtitle D—Administrative Provisions

SEC. 131. VOLUNTARY GUIDELINES.

The Secretary may prescribe voluntary guidelines respecting the standards established by sections 111(d) and 113(b). Such guidelines may not expand the scope or legal effect of such standards or establish additional standards respecting electric utility rates. (92 Stat. 3131; 16 U.S.C. § 2641)

SEC. 132. RESPONSIBILITIES OF SECRETARY OF ENERGY.

(a) AUTHORITY.—The Secretary may periodically notify the State regulatory authorities, and electric utilities identified pursuant to section 102(c), of—

(1) load management techniques and the results of studies and experiments concerning load management techniques;

(2) developments and innovations in electric utility ratemaking throughout the United States, including the results of studies and experiments in rate structure and rate reform;

(3) methods for determining cost of service; and

(4) any other data or information which the Secretary determines

would assist such authorities and utilities in carrying out the provisions of this title.

(b) TECHNICAL ASSISTANCE.—The Secretary may provide such technical assistance as he determines appropriate to assist the State regulatory authorities in carrying out their responsibilities under subtitle B and as is requested by any State regulatory authority relating to the standards established by subtitle B.

* * * * *

(92 Stat. 3132; 16 U.S.C. § 2642)

SEC. 133. GATHERING INFORMATION ON COSTS OF SERVICE.

(a) INFORMATION REQUIRED TO BE GATHERED.—Each electric utility shall periodically gather information under such rules (promulgated by the Commission) as the Commission determines necessary to allow determination of the costs associated with providing electric service. For purposes of this section, and for purposes of any consideration and determination respecting the standard established by section 111(d)(2), such costs shall be separated, to the maximum extent practicable, into the following components: customer cost component, demand cost component, and energy cost component. Rules under this subsection shall include requirements for the gathering of the following information with respect to each electric utility—

(1) the costs of serving each electric consumer class, including costs of serving different consumption patterns within such class, based on voltage level, time of use, and other appropriate factors;

(2) daily kilowatt demand load curves for all electric consumer classes combined representative of daily and seasonal differences in demand, and daily kilowatt demand load curves for each electric consumer class for which there is a separate rate, representative of daily and seasonal differences in demand;

(3) annual capital, operating, and maintenance costs—

(A) for transmission and distribution services, and

(B) for each type of generating unit; and

(4) costs of purchased power, including representative daily and seasonal differences in the amount of such costs.

Such rules shall provide that information required to be gathered under this section shall be presented in such categories and such detail as may be necessary to carry out the purposes of this section.

(b) COMMISSION RULES.—The Commission shall, within 180 days after the date of enactment of this Act, by rule, prescribe the methods, procedure, and format to be used by electric utilities in gathering the information described in this section. Such rules may provide for the exemption by the Commission of an electric utility or class of electric utilities from gathering all or part of such information, in cases where such utility or utilities show and the Commission finds, after public notice and opportunity for the presentation of written data, views, and arguments, that gathering such information is not likely to carry out the purposes of this section. The

Commission shall periodically review such findings and may revise such rules.

(c) FILING AND PUBLICATION.—Not later than two years after the date of enactment of this Act, and periodically, but not less frequently than every two years therefter, each electric utility shall file with—

(1) the Commission, and

(2) any State regulatory authority which has ratemaking authority for such utility,

the information gathered pursuant to this section and make such information available to the public in such form and manner as the Commission shall prescribe. In addition, at the time of application for, or proposal of, any rate increase, each electric utility shall make such information available to the public in such form and manner as the Commission shall prescribe. The two-year period after the date of the enactment specified in this subsection may be extended by the Commission for a reasonable additional period in the case of any electric utility for good cause shown.

(d) ENFORCEMENT.—For purposes of enforcement, any violation of a requirement of this section shall be treated as a violation of a provision of the Energy Supply and Environmental Coordination Act of 1974 enforceable under section 12 of such Act (notwithstanding any expiration date in such Act) except that in applying the provisions of such section 12 any reference to the Federal Energy Administrator shall be treated as a reference to the Commission. (92 Stat. 3132; 16 U.S.C. § 2643)

SEC. 134. RELATIONSHIP TO OTHER AUTHORITY.

Nothing in this title shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law. (92 Stat. 3133; 16 U.S.C. § 2644)

* * * * *

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

* * * * *

SEC. 205. POOLING.

(a) STATE LAWS.—The Commission may, on its own motion, and shall, on application of any person or governmental entity, after public notice and notice to the Governor of the affected State and after affording an opportunity for public hearing, exempt electric utilities, in whole or in part, from any provision of State law, or from any State rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities, including any agreement for central dispatch, if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area. No such exemption may be granted if the Commission finds that such provision of State law, or rule or regulation—

(1) is required by any authority of Federal law, or

(2) is designed to protect public health, safety, or welfare, or the environment or conserve energy or is designed to mitigate the effects of emergencies resulting from fuel shortages.

(b) POOLING STUDY.—(1) The Commission, in consultation with the reliability councils established under section 202(a) of the Federal Power Act, the Secretary, and the electric utility industry shall study the opportunities for—

(A) conservation of energy,

(B) optimization in the efficiency of use of facilities and resources, and

(C) increased reliability,

through pooling arrangements. Not later than 18 months after the date of the enactment of this Act, the Commission shall submit a report containing the results of such study to the President and the Congress.

(2) The Commission may recommend to electric utilities that such utilities should voluntarily enter into negotiations where the opportunities referred to in paragraph (1) exist. The Commission shall report annually to the President and the Congress regarding any such recommendations and subsequent actions taken by electric utilities, by the Commission, and by the Secretary under this Act, the Federal Power Act, and any other provision of law. Such annual reports shall be included in the Commission's annual report required under the Department of Energy Organization Act. (92 Stat. 3140; 16 U.S.C. § 824a-1)

* * * * *

SEC. 209. RELIABILITY.

* * * * *

(b) EXAMINATION OF RELIABILITY ISSUES BY RELIABILITY COUNCILS.—The Secretary, in consultation with the Commission, may, from time to time, request the reliability councils established under section 202(a) of the Federal Power Act or other appropriate persons (including Federal agencies) to examine and report to him concerning any electric utility reliability issue. The Secretary shall report to the Congress (in its annual report or in the report required under subsection (a) if appropriate) the results of any examination under the preceding sentence.

(c) DEPARTMENT OF ENERGY RECOMMENDATIONS.—The Secretary, in consultation with the Commission, and after opportunity for public comment, may recommend industry standards for reliability to the electric utility industry, including standards with respect to equipment, operating procedures and training of personnel, and standards relating to the level or levels of reliability appropriate to adequately and reliably serve the needs of electric consumers. The Secretary shall include in his annual report—

(1) any recommendations made under this subsection or any recommendations respecting electric utility reliability problems under any other provision of law, and

(2) a description of actions taken by electric utilities with respect to such recommendations. (92 Stat. 3140; 16 U.S.C. § 824a-2)

SEC. 210. COGENERATION AND SMALL POWER PRODUCTION.

(a) COGENERATION AND SMALL POWER PRODUCTION RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities at not more than 80 megawatts capacity, which rules require electric utilities to offer to—

(1) sell electric energy to qualifying cogeneration facilities and qualifying small production facilities and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) RATES FOR PURCHASES BY ELECTRIC UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

(c) RATES FOR SALES BY UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale—

(1) shall be just and reasonable and in the public interest and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

(d) DEFINITION.—For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power pro-

ducer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

(e) EXEMPTIONS.—(1) Not later than 1 year after the date of enactment of this Act and from time to time thereafter, the Commission shall, after consultation with representatives of Sate regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which geothermal small power production facilities of not more than 80 megawatts capacity, qualifying cogeneration facilities, and qualifying small power production facilities are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

(2) No qualifying small power production facility which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 30 megawatts or 80 megawatts for a qualifying small power production facility using geothermal energy as the primary energy source, may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source, may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying cogeneration facility may be exempted under this subsection from—

(A) any State law or regulation in effect in a State pursuant to subsection (f).

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

(f) IMPLEMENTATION OF RULES FOR QUALIFYING COGENERATION AND QUALIFYING SMALL POWER PRODUCTION FACILITIES.—(1) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

(g) JUDICIAL REVIEW AND ENFORCEMENT.—(1) Judicial review may be obtained respecting any proceeding conducted by a State regulatory authority or nonregulated electric utility for purposes of implementing any requirement of a rule under subsection (a) in the same manner, and under the same requirements, as judicial review may be obtained under section 123 in the case of a proceeding to which section 123 applies.

(2) Any person (including the Secretary) may bring an action against any electric utility, qualifying small power producer, or qualifying cogenerator to enforce any requirement established by a State regulatory authority or nonregulated electric utility pursuant to subsection (f). Any such action shall be brought only in the manner, and under the requirements, as provided under section 123 with respect to an action to which section 123 applies.

(h) COMMISSION ENFORCEMENT.—(1) For purposes of enforcement of any rule prescribed by the Commission under subsection (a) with respect to any operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility which are subject to the jurisdiction of the Commission under part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act. Nothing in subsection (g) shall apply to so much of the operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility as are subject to the jurisdiction of the Commission under part II of the Federal Power Act.

(2)(A) The Commission may enforce the requirements of subsection (f) against any State regulatory authority or nonregulated electric utility. For purposes of any such enforcement, the requirements of subsection (f)(1) shall be treated as a rule enforceable under the Federal Power Act. For purposes of any such action, a State regulatory authority or nonregulated electric utility shall be treated as a person within the meaning of the Federal Power Act. No enforcement action may be brought by the Commission under this section other than—

(i) an action against the State regulatory authority or nonregulated electric utility for failure to comply with the requirements of subsection (f) or

(ii) an action under paragraph (1).

(B) Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State reg-

ulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue such injunctive or other relief as may be appropriate. The Commission may intervene as a matter of right in any such action.

(i) FEDERAL CONTRACTS.—No contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any rule under this section with respect to such utility. Any provision in any such contract which has such effect shall be null and void.

(j) DEFINITIONS.—For purposes of this section, the terms "small power production facility", "qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective meanings provided for such terms under section 3 (17) and (18) of the Federal Power Act. (92 Stat. 3144; § 643(b), Act of June 30, 1980, 94 Stat. 770; 16 U.S.C. § 824a-3)

EXPLANATORY NOTE

1980 Amendment. Section 643(b) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 770), known as the Energy Security Act, inserted references to geothermal small power production facilities in subsections (a), (e) (1) and (e) (2). Title VI of that act, in which section 643 is located, is known as the Geothermal Energy Act of 1980. The Act does not appear herein.

* * * * *

SEC. 214. PRIOR ACTION: EFFECT ON OTHER AUTHORITIES.

(a) PRIOR ACTIONS.—No provision of this title or of any amendment made by this title shall apply to, or affect, any action taken by the Commission before the date of the enactment of this Act.

(b) OTHER AUTHORITIES.—No provision of this title or of any amendment made by this title shall limit, impair or otherwise affect any authority of the Commission or any other agency or instrumentality of the United States under any other provision of law except as specifically provided in this title. (92 Stat. 3149; 16 U.S.C. § 824 note)

* * * * *

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

SEC. 401. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program in accordance with this title to encourage municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and other persons to undertake the development of small hydroelectric power projects in connection with existing

dams which are not being used to generate electric power. (92 Stat. 3154; 16 U.S.C. § 2701)

SEC. 402. LOANS FOR FEASIBILITY STUDIES.

(a) LOAN AUTHORITY.—The Secretary, after consultation with the Commission, is authorized to make a loan to any municipality, electric cooperative, industrial development agency, nonprofit organization, or other person to assist such person in defraying up to 90 percent of the costs of—

(1) studies to determine the feasibility of undertaking a small hydroelectric power project at an existing dam or dams and

(2) preparing any application for a necessary license or other Federal, State, and local approval respecting such a project at an existing dam or dams and of participating in any administrative proceeding regarding any such application.

(b) CANCELLATION.—The Secretary may cancel the unpaid balance and any accrued interest on any loan granted pursuant to this section if he determines on the basis of the study that the small hydroelectric power project would not be technically or economically feasible. (92 Stat. 3154; 16 U.S.C. § 2701)

SEC. 403. LOANS FOR PROJECT COSTS.

(a) AUTHORITY.—The Secretary is authorized to make loans to any municipality, electric cooperative, industrial development agency, nonprofit organization, or other person of up to 75 percent of the project costs of a small hydroelectric power project. No such loan may be made unless the Secretary finds that—

(1) the project will be constructed in connection with an existing dam or dams,

(2) all licenses and other required Federal, State, and local approvals necessary for construction of the project have been issued,

(3) the project will have no significant adverse environmental effects, including significant adverse effects on fish and wildlife, on recreational use of water, and on stream flow, and

(4) the project will not have a significant adverse effect on any other use of the water used by such project.

The Secretary may make a commitment to make a loan under this subsection to an applicant who has not met the requirements of paragraph (2), pending compliance by such applicant with such requirements. Such commitment shall be for period of not to exceed 3 years unless the Secretary, in consultation with the Commission, extends such period for good cause shown. Notwithstanding any such commitment, no such loan shall be made before such person has complied with such requirements.

(b) PREFERENCE.—The Secretary shall give preference to applicants under this section who do not have available alternative financing which the Secretary deems appropriate to carry out the project and whose projects will provide useful information as to the technical and economic feasibility of—

(1) the generation of electric energy by such projects, and

(2) the use of energy produced by such projects.

(c) INFORMATION.—Every applicant for a license for a small hydroelectric power project receiving loans pursuant to this section shall furnish the Secretary with such information as the Secretary may require regarding equipment and services proposed to be used in the design, construction, and operation of such project. The Secretary shall have the right to forbid the use in such project of any equipment or services he finds inappropriate for such project by reason of cost, performance, or failure to carry out the purposes of this section. The Secretary shall make information which he obtains under this subsection available to the public, other than information described as entitled to confidentiality under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974.

(d) JOINT PARTICIPATION.—In making loans for small hydroelectric power projects under this section, the Secretary shall encourage joint participation, to the extent permitted by law, by applicants eligible to receive loans under this section with respect to the same project. (92 Stat. 3155; 16 U.S.C. § 2703)

SEC. 404. LOAN RATES AND REPAYMENT.

(a) INTEREST.—Each loan made pursuant to this title shall bear interest at the discount or interest rate used at the time the loan is made for water resources planning projects under section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962-17(a)). Each such loan shall be for such term, as the Secretary deems appropriate, but not in excess of—

(1) 10 years (in the case of a loan under section 402) or

(2) 30 years (in the case of a loan under section 403).

(b) REPAYMENTS.—Amounts repaid on loans made pursuant to this title shall be deposited into the United States Treasury as miscellaneous receipts. (92 Stat. 3155; 16 U.S.C. § 2704)

EXPLANATORY NOTE

Reference in the Text. Section 80 of the Water Resources Development Act of 1974 (Act of March 7, 1974, 88 Stat. 12), referred to in subsection (a) of the text, adopts the discount rate formula published by the Water Resources Council on December 24, 1968 (33 F.R. 19170; 18 C.F.R. 704.39) for use in formulating and evaluating water resource projects. Extracts from the 1974 Act, including section 80, appear in Volume IV in chronological order.

SEC. 405. SIMPLIFIED AND EXPEDITIOUS LICENSING PROCEDURES.

(a) ESTABLISHMENT OF PROGRAM.—The Commission shall establish, in such manner as the Commission deems appropriate, consistent with the applicable provisions of law, a program to use simple and expeditious licensing procedures under the Federal Power Act for small hydroelectric power projects in connection with existing dams.

(b) PREREQUISITES.—Before issuing any license under the Federal Power Act for the construction or operation of any small hydroelectric power project the Commission—

(1) shall assess the safety of existing structures in any proposed project (including possible consequences associated with failure of such structures), and

(2) shall provide an opportunity for consultation with the Council on Environmental Quality and the Environmental Protection Agency with respect to the environmental effects of such project.

Nothing in this subsection exempts any such project from any requirement applicable to any such project under the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the Endangered Species Act, or any other provision of Federal law.

(c) FISH AND WILDLIFE FACILITIES.—The Commission shall encourage applicants for licenses for small hydroelectric power projects to make use of public funds and other assistance for the design and construction of fish and wildlife facilities which may be required in connection with any development of such project.

(d) EXEMPTIONS FROM LICENSING REQUIREMENTS IN CERTAIN CASES.—The Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements (including the licensing requirements) of part I of the Federal Power Act to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less, on a case-by-case basis or on the basis of classes or categories of projects, subject to the same limitations (to ensure protection for fish and wildlife as well as other environmental concerns) as those which are set forth in subsections (c) and (d) of section 30 of the Federal Power Act with respect to determinations made and exemptions granted under subsection (a) of such section 30; and subsections (c) and (d) of such section 30 shall apply with respect to actions taken and exemptions granted under this subsection. Except as specifically provided in this subsection, the granting of an exemption to a project under this subsection shall in no case have the effect of waiving or limiting the application (to such project) of the second sentence of subsection (b) of this section. (92 Stat. 3156; § 408, Act of June 30, 1980, 94 Stat. 718; 16 U.S.C. § 2705)

EXPLANATORY NOTES

1980 Amendment. Section 408(b) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 718), known as the Energy Security Act, added subsection (d). Title IV of that act, in which section 408 is located, is known as the Renewable Energy Resources Act of 1980. The Act does not appear herein.

NOTE OF OPINION

1. Lease of power privilege charge

The Secretary of the Interior may, but need not, impose upon a non-Federal power development at a Reclamation facility a charge for the lease of power privileges even though the Federal Energy Regulatory Commission has exempted the development from paying reasonable annual charges under the Federal Power Act for use of the Reclamation facility. Memorandum of Associate Solicitor Good, December 15, 1981.

SEC. 406. NEW IMPOUNDMENTS.

Nothing in this title authorizes (1) the loan of funds for construction of

any new dam or other impoundment, or (2) the simple and expeditious licensing of any such new dam or other impoundment. (92 Stat. 3156; 16 U.S.C. § 2706)

* * * * *

SEC. 408. DEFINITIONS.

(a) For purposes of this title, the term—

(1) "small hydroelectric power project" means any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of such dam, and which has not more than 30,000 kilowatts of installed capacity;

(2) "electric cooperative" means any cooperative association eligible to receive loans under section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 904);

(3) "industrial development agency" means any agency which is permitted to issue obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1954;

(4) "project costs" means the cost of acquisition or construction of all facilities and services and the cost of acquisition of all land and interests in land used in the design and construction and operation of a small hydroelectric power project;

(5) "nonprofit organization" means any organization described in section 501(c) (3) or 501(c) (4) of the Internal Revenue Code of 1954 and exempt from tax under section 501(a) of such Code (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization);

(6) "existing dam" means any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project;

(7) "municipality" has the meaning provided in section 3 of the Federal Power Act; and

(8) "person" has the meaning provided in section 3 of the Federal Power Act.

(b) The requirement in subsection (a)(1) that a project be located at the site of an existing dam in order to qualify as a small hydroelectric power project, and the other provisions of this title which require that a project be at or in connection with an existing dam (or utilize the potential of such dam) in order to be assisted under or included within such provisions, shall not be construed to exclude—

(1) from the definition contained in such subsection (a)(1), or

(2) from any other provision of this title,

any project which utilizes or proposes to utilize natural water features for the generation of electricity, without the need for any dam or impound-

ment, in a manner which (as determined by the Commission) will achieve the purposes of this title and will do so without any adverse effect upon such natural water features. (92 Stat. 3156; § 408, Act of June 30, 1980, 94 Stat. 718; 16 U.S.C. § 2708)

EXPLANATORY NOTE

1980 Amendment. Subsection 408(a) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 718), known as the Energy Security Act, changed "15,000" in subsection a(1) to "30,000", and subsection 408(c) of the 1980 Act added subsection (b). Title IV of the act, in which section 408 is located, is known as the Renewable Energy Resources Act of 1980. The Act does not appear herein.

* * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 602. SEASONAL DIVERSITY ELECTRICITY EXCHANGE.

(a) AUTHORITY.—The Secretary may acquire rights-of-way by purchase, including eminent domain, through North Dakota, South Dakota, and Nebraska for transmission facilities for the seasonal diversity exchange of electric power to and from Canada if he determines—

(1) after opportunity for public hearing—

(A) that the exchange is in the public interest and would further the purposes referred to in section 101 (1) and (2) of this Act and that the acquisition of such rights-of-way and the construction and operation of such transmission facilities for such purposes is otherwise in the public interest,

(B) that a permit has been issued in accordance with subsection (b) for such construction, operation, maintenance, and connection of the facilities at the border for the transmission of electric energy between the United States and Canada as is necessary for such exchange of electric power, and

(C) that each affected State has approved the portion of the transmission route located in each State in accordance with applicable State law, or if there is no such applicable State law in such State, the Governor has approved such portion; and

(2) after consultation with the Secretary of the Interior and the heads of other affected Federal agencies, that the Secretary of the Interior and the heads of such, other agencies concur in writing in the location of such portion of the transmission facilities as crosses Federal land under the jurisdiction of such Secretary or such other Federal agency, as the case may be.

The Secretary shall provide to any State such cooperation and technical assistance as the State may request and he determines appropriate in the selection of a transmission route. If the transmission route approved by any

State does not appear to be feasible and in the public interest, the Secretary shall encourage such State to review such route and to develop a route that is feasible and in the public interest. Any exercise by the Secretary of the power of eminent domain under this section shall be in accordance with other applicable provisions of Federal law. The Secretary shall provide public notice of his intention to acquire any right-of-way before exercising such power of eminent domain with respect to such right-of-way.

(b) PERMIT.—Notwithstanding any transfer of functions under the first sentence of section 301(b) of the Department of Energy Organization Act, no permit referred to in subsection (a)(1)(B) may be issued unless the Commission has conducted hearings and made the findings required under section 202(e) of the Federal Power Act and under the applicable execution order respecting the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country. Any finding of the Commission under an applicable executive order referred to in this subsection shall be treated for purposes of judicial review as an order issued under section 202(e) of the Federal Power Act.

(c) TIMELY ACQUISITION BY OTHER MEANS.—The Secretary may not acquire any rights-of-day [sic] under this section unless he determines that the holder or holders of a permit referred to in subsection (a)(1)(B) are unable to acquire such rights-of-way under State condemnation authority, or after reasonable opportunity for negotiation, without unreasonably delaying construction, taking into consideration the impact of such delay on completion of the facilities in a timely fashion.

(d) PAYMENTS BY PERMITTEES.—(1) The property interest acquired by the Secretary under this section (whether by eminent domain or other purchase) shall be transferred by the Secretary to the holder of a permit referred to in subsection (b) if such holder has made payment to the Secretary of the entire costs of the acquisition of such property interest, including administrative costs. The Secretary may accept, and expend, for purposes of such acquisition, amounts from any such person before acquiring a property interest to be transferred to such person under this section.

(2) If no payment is made by a permit holder under paragraph (1), within a reasonable time, the Secretary shall offer such rights-of-way to the original owner for reacquisition at the original price paid by the Secretary. If such original owner refuses to reacquire such property after a reasonable period, the Secretary shall dispose of such property in accordance with applicable provisions of law governing disposal of property of the United States.

(e) FEDERAL LAW GOVERNING FEDERAL LANDS.—This section shall not affect any Federal law governing Federal lands.

(f) REPORTS.—The Secretary shall report annually to the Congress on the actions, if any, taken pursuant to this section. (92 Stat. 3164; 16 U.S.C. § 824a-4)

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 4018, Public Law 95-617 in the 95th Congress. PURPA was one of five national energy bills signed into law on November 9, 1978. The others were H.R. 5263, the Energy Tax Act of 1978, Public Law 95-618; H.R. 5037, the National Energy Conservation Policy Act, Public Law 95-619; H.R. 5146, the Powerplant and Industrial Fuel Use Act of 1978, Public Law 95-620; and H.R. 5289, the Natural Gas Policy Act of 1978, Public Law 95-621. The original proposals for public utility regulatory policies were contained in Title I, part E of H.R. 6831 and S. 1469. On July 19, 1977, the House Committee on Interstate and Foreign Commerce issued its report on various sections of H.R. 6831, including part V; H.R. Rept. No. 95-496, Part 4. On July 27, 1977, the Ad Hoc Committee on Energy of the U.S. House of Representatives reported H.R. 8444; H.R. Rept. No. 95-543, Volumes I and II. H.R. 8444 passed the House on August 5, 1977. On September 20, 1977, the Senate Committee on Energy and Natural Resources reported S. 2114; S. Rept. No. 95-442. On October 6, 1977, the Senate passed H.R. 4018, a duty bill selected for this purpose, after amending it to include S. 2114 and Part 5 of H.R. 8444 with various further amendments. On October 13, 1977, H.R. 4018 was referred to conference. Reports of the Committee of Conference on H.R. 4018 were filed in the Senate on October 6, 1978. (S. Rept. No. 95-1292) and in the House on October 10, 1968 (H.R. Rept. No. 95-1750). H.R. 4018, as amended by the conference committee, passed the Senate on October 9, 1978 and the House on October 14, 1978.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1980

[Extracts from] An act making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes. (Act of September 25, 1979, Public Law 96-69, 93 Stat. 437)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

CONSTRUCTION AND REHABILITATION

* * * * *

[Costs for American Falls Dam.]—*Provided futher,* That currently unobligated funds from appropriations made under this heading for payment of Teton Dam disaster claims shall be available to pay costs to irrigation spaceholder contracting entities for American Falls Dam pursuant to section 7, Reclamation Safety of Dams Act (Public law 95-578), and shall be nonreimbursable in accordance with the terms of that Act. (93 Stat. 444)

EXPLANATORY NOTE

Reference in the Text. The Reclamation Safety of Dams Act (Act of November 2, 1978, 92 Stat. 2471, 43 U.S.C. § 506 et seq.) appears in Volume VI in chronological order.

* * * * *

Sec. 305. [Limit on per acre repayment obligation on block 26, Columbia Basin project.]—Notwithstanding the provisions of the Act of October 1, 1962 (76 Stat. 677), the Secretary of the Interior, in the development of the irrigation lands located in block 26 of the Columbia Basin project, Washington, shall take such action as may be necessary to assure that the per acre repayment obligation shall be the same as those set forth in repayment contract 11 R 1444, dated October 9, 1945, as amended, between the United States of America and the South Columbia Basin Irrigation District, but in no case shall such per acre repayment obligation exceed $131.60. (93 Stat. 447)

EXPLANATORY NOTE

Reference in the Text. The Act of October 1, 1962, referred to in the text, authorizes amendatory repayment contracts for the Columbia Basin project and amends the Columbia Basin Project Act. The 1962 Act appears in Volume III at page 1690.

* * * * *

[Short title]—This Act may be cited as the "Energy and Water Development Appropriation Act, 1980". (93 Stat. 451)

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted 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. 4388, Public Law 96-69 in the 96th Congress. H.R. Rept. No. 96-243. S. Rept. No. 96-242. H.R. Rept. No. 96-388 (conference report).

ARCHAEOLOGICAL RESOURCES PROTECTION ACT

An act to protect archaeological resources on public lands and Indian lands, and for other purposes. (Act of October 31, 1979, Public Law 96-95, 93 Stat. 721)

Sec. 1. [Short title]—This Act may be cited as the "Archaeological Resources Protection Act of 1979". (93 Stat. 721; 16 U.S.C. § 470aa note.)

Sec. 2. [Congressional findings concerning archaeological resources and the need to protect them]—(a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act. (93 Stat. 721; 16 U.S.C. § 470aa)

Sec. 3. [Definitions: "Archaeological resource"; "Federal land manager"; "Public lands"; "Indian lands"; "Indian Tribe"; "Person".]—As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency

or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. (93 Stat 721; 16 U.S.C. § 470bb)

Sec. 4. [Application for permit to remove or excavate archaeological resources—Requirements for permit issuance—Notification of Indian tribes—Suspension of permit—Permit exemption for Indians on Indian lands—Consent required from Indian tribe—Validity of permits issued under Act of June 8, 1906—Compliance with Act of October 15, 1966—Permit request by Governor.]—(a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information

concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act. (93 Stat. 722; 16 U.S.C. § 470cc)

EXPLANATORY NOTE

References in the Text. The Act of June 8, 1906 (34 Stat. 225), referred to in subsections (g) and (h) of the text, is the Antiquities Act of 1906. It authorizes the President to set aside National Monuments, requires permits for examination and excavation of ruins, and prohibits destruction of antiquities. The 1906 Act does not appear herein. The Act of October 15, 1966, referred to in subsection (i) of the text, is the National Historic Preservation Act. The 1966 Act appears in Volume IV in chronological order.

Sec. 5. [Promulgation of regulations for exchange and disposition of archaeological resources.]—The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act. (93 Stat. 724; 16 U.S.C. § 470dd)

EXPLANATORY NOTE

References in the Text. The Act of June 27, 1960 (74 Stat. 220), referred to in the text, deals with the preservation of historical and archaeological data threatened by con-

struction of dams and other projects on Federal lands. The 1960 Act appears in Volume III at page 1533. The Act of June 8, 1906 (34 Stat. 225), also referred to in the text, is the Antiquities Act of 1906. It authorizes the President to set aside National Monuments, requires permits for examination and excavation of ruins, and prohibits destruction of antiquities. The 1906 Act does not appear herein.

Sec. 6. [Prohibited acts—Criminal penalties for knowing violations—Effective date—Exemptions from penalty.]—(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $5,000, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground. (93 Stat. 724; 16 U.S.C. § 470ee)

Sec. 7. [Civil penalty—Factors for determining amount—Exemption—Judicial review—Failure to pay penalty—Action by Attorney General—Procedural rules for hearings.]—(a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this

Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpenas for the attendance and testimony of witnesses and the pro-

duction of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (93 Stat. 725; 16 U.S.C. § 470ff)

EXPLANATORY NOTE

Reference in the Text. Section 554 of Title 5 of the U.S. Code, referred to in subsection (c) of the text, deals with procedural matters in administrative hearings. Section 554 is part of the Act of June 11, 1946, as amended, known as the Administrative Procedure Act. Extracts from Title 5 appear in Volume III, Appendix, beginning at page 1927, and in the Appendix in Supplement I.

Sec. 8. [Reward for information furnished—Forfeiture of archaeological resources, vehicles and equipment involved in violation—Violations involving Indian lands.]—(a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6,

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe

involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section. (93 Stat. 726; 16 U.S.C. § 470gg)

Sec. 9. [Disclosure of information concerning nature and location of archaeological resource—Request by State Governor.]—(a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor. (93 Stat. 727; 16 U.S.C. § 470hh)

EXPLANATORY NOTE

References in the Text. Subchapter II of Chapter 5 of Title 5 of the U.S. Code, referred to in the text, is part of the Act of June 11, 1946, as amended, known as the Administrative Procedure Act. Subchapter II deals generally with agency procedures, including making records available to the public under the Freedom of Information Act. Extracts from Title 5 appear in Volume III, Appendix, beginning at page 1927, and in the Appendix in Supplement I. The Act of June 27, 1960 (74 Stat. 220), also referred to in the text, deals with the preservation of historical and archaeological data threatened by construction of dams and other projects on Federal lands. The 1960 Act appears in Volume III at page 1553.

Sec. 10. [Rules and Regulations.]—(a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and

Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act. (93 Stat. 727; 16 U.S.C. § 470ii)

Sec. 11. [Communication, cooperation and exchange of information—Expansion of archaeological resources data base.]—The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations. (93 Stat. 727; 16 U.S.C. § 470jj)

Sec. 12. [Relationship with other laws—Applicability—No effect on non-public or non-Indian land.]—(a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land. (93 Stat. 727; 16 U.S.C. § 470kk)

Sec. 13. [Annual Report—Recommendations and summary of activities.]—As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of

the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals. (93 Stat. 727; 16 U.S.C. § 470ll)

EXPLANATORY NOTES

Reference in the Text. The Act of June 27, 1960 (74 Stat. 220), referred to in the text, deals with the preservation of historical and archaeological data threatened by construction of dams and other projects on Federal lands. The 1960 Act appears in Volume III at page 1553.

Legislative History. H.R. 1525, Public Law 96-95 in the 96th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 96-311. Passed House July 9, 1979. S. 490 reported in Senate from Energy and Natural Resources; S. Rept. No. 96-179. H.R. 1525 passed Senate, as amended, in lieu of S. 490 July 30, 1979. House agrees to Senate amendments with an amendment October 12, 1979. Senate concurs in House amendment October 17, 1979.

FEASIBILITY STUDY—YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

An act to authorize the Secretary of the Interior to engage in a feasibility study. (Act of December 28, 1979, Public Law 96-162, 93 Stat. 1241)

[Authorization of feasibility study for Yakima River Basin Water Enhancement Project.]—The Secretary of the Department of the Interior is authorized and directed to conduct a feasibility study of the Yakima River Basin Water Enhancement Project, which shall include an analysis by the United States Geological Survey of the water-supply data for the Yakima River Basin. The Secretary is authorized to accept moneys from the State of Washington or other persons or entities, public or private, to assist in the financing of the feasibility study. (93 Stat. 1241)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 585, Public Law 96-162 in the 96th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-248. Passed Senate July 23, 1979. H.R. 2757 reported in House from Interior and Insular Affairs; H.R. Rept. No. 96-601. H.R. 2757 passed House, passage vacated, and S. 585, as amended, passed in lieu thereof December 10, 1979. Senate concurs in House amendments December 18, 1979.

LAKE TEXANA

An act to change the name of the Palmetto Bend Reservoir on the Navidad River in Texas to Lake Texana. (Act of December 29, 1979, Public Law 96-172, 93 Stat. 1286)

[Name change: Palmetto Bend Reservoir to Lake Texana.]—The Palmetto Bend Reservoir on the Navidad River near Edna, Texas, authorized to be constructed by the Act entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain stage 1 and to acquire lands for stage 2 of the Palmetto Bend reclamation project, Texas, and for other purposes", approved October 12, 1968 (82 Stat. 999), shall be known as Lake Texana. Any reference in any law, regulation, map, document, record, or other paper of the United States to such reservoir shall be considered to be a reference to Lake Texana. (93 Stat. 1286)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of October 12, 1968, referred to in the text, appears in Volume IV in chronological order.

Legislative History. H.R. 2771, Public Law 96-172 in the 96th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 96-142. Passed House May 21, 1979. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-482. Passed Senate December 20, 1979.

AMENDED BEAR RIVER COMPACT

An act to consent to the amended Bear River Compact between the States of Utah, Idaho, and Wyoming. (Act of February 8, 1980, Public Law 96-189, 94 Stat. 4)

[Sec. 1. Consent of Congress to amend compact.]—[T]he consent of Congress is given to the amended Bear River Compact between the States of Idaho, Utah, and Wyoming. Such compact reads as follows:

"AMENDED BEAR RIVER COMPACT

"The State of Idaho, the State of Utah and the State of Wyoming, acting through their respective Commissioners after negotiations participated in by a representative of the United States of America appointed by the President, have agreed to an Amended Bear River Compact as follows:

"ARTICLE I

"A. The major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; and to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.

"B. The physical and all other conditions peculiar to the Bear River constitute the basis for this Compact. No general principle or precedent with respect to any other interstate stream is intended to be established.

"ARTICLE II

"As used in this Compact the term

"1. 'Bear River' means the Bear River and its tributaries from its source in the Uinta Mountains to its mouth in Great Salt Lake;

"2. 'Bear Lake' means Bear Lake and Mud Lake;

"3. 'Upper Division' means the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the Southeast Quarter of Section 25, Township 23 North, Range 120 West, Sixth Principal Meridian, Wyoming;

"4. 'Central Division' means the portion of Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in Section 34, Township 13 South, Range 44 East, Boise Base and Meridian, Idaho;

"5. 'Lower Division' means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage;

"6. 'Upper Utah Section Diversions' means the sum of all diversions in second-feet from the Bear River and the tributaries of the Bear River joining the Bear River upstream from the point where the Bear River crosses

the Utah-Wyoming State line above Evanston, Wyoming; excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

"7. 'Upper Wyoming Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming, to the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

"8. 'Lower Utah Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, to the point where the Bear river crosses the Utah-Wyoming State line northeast of Randolph, Utah;

"9. 'Lower Wyoming Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line northeast of Randolph to and including the diversion at Pixley Dam;

"10. 'Commission' means the Bear River Commission, organized pursuant to Article III of this Compact;

"11. 'Water user' means a person, corporation, or other entity having a right to divert water from the Bear River for beneficial use;

"12. 'Second-foot' means a flow of one cubic foot of water per second of time passing a given point;

"13. 'Acre-foot' means the quantity of water required to cover one acre to a depth of one foot, equivalent to 43,560 cubic feet;

"14. 'Biennium' means the 2-year period commencing on October 1 of the first odd-numbered year after the effective date of this Compact and each 2-year period thereafter;

"15. 'Water year' means the period beginning October 1 and ending September 30 of the following year;

"16. 'Direct flow' means all water flowing in a natural watercourse except water released from storage or imported from a source other than the Bear River watershed;

"17. 'Border Gaging Station' means the stream flow gaging station in Idaho on the Bear River above Thomas Fork near the Wyoming-Idaho boundary line in the Northeast Quarter of the Northeast Quarter of Section 15, Township 14 South, Range 46 East, Boise Base and Meridian, Idaho;

"18. 'Smiths Fork' means a Bear River tributary which rises in Lincoln County, Wyoming, and flows in a general southwesterly direction to its confluence with Bear River near Cokeville, Wyoming;

"19. 'Grade Creek' means a Smiths Fork tributary which rises in Lincoln County, Wyoming, and flows in a westerly direction and in its natural channel is tributary to Smiths Fork in Section 17, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming;

"20. 'Pine Creek' means a Smiths Fork tributary which rises in Lincoln County, Wyoming, emerging from its mountain canyon in Section 34, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming, and in its natural channel is tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"21. 'Bruner Creek' and 'Pine Creek Springs' means Smiths Fork tributaries which rise in Lincoln County, Wyoming, in Sections 31 and 32, Township 25 North Range 118 West, Sixth Principal Meridian, and in their natural channels are tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"22. 'Spring Creek' means a Smiths Fork tributary which rises in Lincoln County, Wyoming, in Sections 1 and 2, Township 24, Range 119 West, Sixth Principal Meridian, Wyoming, and flows in a general westerly direction to its confluence with Smiths Fork in Section 4, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"23. 'Sublette Creek' means the Bear River tributary which rises in Lincoln County, Wyoming, and flows in a general westerly direction to its confluence with Bear River in Section 20, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"24. 'Hobble Creek' means the Smiths Fork tributary which rises in Lincoln County, Wyoming, and flows in a general southwesterly direction to its confluence with Smiths Fork in Section 35, Township 28 North, Range 118 West, Sixth Principal Meridian, Wyoming;

"25. 'Hilliard East Fork Canal' means that irrigation canal which diverts water from the right bank of the East Fork of Bear River in Summit County, Utah, at a point West 1,310 feet and North 330 feet from the Southeast corner of Section 16, Township 2 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the southwest Quarter of Section 21, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"26. 'Lannon Canal' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, East 1,480 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"27. 'Lone Mountain Ditch' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, North 1,535 feet and East 1,120 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"28. 'Hilliard West Side Canal' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, at a point North 2,190 feet and East 1,450 feet from the South Quarter corner

of Section 13, Township 3 North, Range 9 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

"29. 'Francis Lee Canal' means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter corner of Section 30, Township 18 North, Range 120 West, Sixth Principal Meridian, Wyoming, and runs in a westerly direction across the Wyoming-Utah State line into Section 16, Township 9 North, Range 8 East, Salt Lake Base and Meridian, Utah;

"30. 'Chapman Canal' means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 36, Township 16 North, Range 121 West, Sixth Principal Meridian, Wyoming, and runs in a northerly direction crossing over the low divided into the Saleratus drainage basin near the Southeast corner of Section 36, Township 17 North, Range 121 West, Sixth Principal Meridian, Wyoming, and then in a general westerly direction crossing the Wyoming-Utah State line;

"31. 'Neponset Reservoir' means that reservoir located principally in Sections 34 and 35, Township 8 North, Range 7 East, Salt Lake Base and Meridian, Utah, having a capacity of 6,900 acre-feet.

"ARTICLE III

"A. There is hereby created an interstate administrative agency to be known as the 'Bear River Commission' which is hereby constituted a legal entity and in such name shall exercise the power hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission.

"B. The compensation and expenses of each Commissioner and each adviser shall be paid by the government which he represents. All expenses incurred by the Commission in the administration of this Compact, except those paid by the United States of America, shall be paid by the signatory States on an equal basis.

"C. The Commission shall have power to:

"1. Adopt bylaws, rules, and regulations not inconsistent with this Compact;

"2. Acquire, hold, convey or otherwise dispose of property;

"3. Employ such persons and contract for such services as may be necessary to carry out its duties under this Compact;

"4. Sue and be sued as a legal entity in any court of record of a signatory

State, and in any court of the United States having jurisdiction of such action;

"5. Co-operate with State and Federal agencies in matters relating to water pollution of interstate significance;

"6. Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in co-operation with others, including State and Federal agencies.

"D. The Commission shall:

"1. Enforce this Compact and its order made hereunder by suit or other appropriate action;

"2. Compile a report covering the work of the Commission and expenditures during the current biennium, and an estimate of expenditures for the following biennium and transmit it to the President of the United States and to the Governors of the signatory States on or before July 1 following each biennium.

"ARTICLE IV

"Rights to direct flow water shall be administered in each signatory State under State law, with the following limitations:

"A. When there is a water emergency, as hereinafter defined for each division, water shall be distributed therein as provided below.

"1. Upper Division

"a. When the divertible flow as defined below for the upper division is less than 1,250 second-feet, a water emergency shall be deemed to exist therein and such divertible flow is allocated for diversion in the river sections of the Division as follows:

"Upper Utah Section Diversions—0.6 percent,

"Upper Wyoming Section Diversions—49.3 percent,

"Lower Utah Section Diversions—40.5 percent,

"Lower Wyoming Section Diversions—9.6 percent.

"Such divertible flow shall be the total of the following five items:

"(1) Upper Utah Section Diversions in second-feet,

"(2) Upper Wyoming Section Diversions in second-feet,

"(3) Lower Utah Section Diversions in second-feet,

"(4) Lower Wyoming Section Diversions in second-feet,

"(5) The flow in second-feet passing Pixley Dam.

"b. The Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal, which divert water in Utah to irrigate lands in Wyoming, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

"c. The Chapman, Bear River, and Francis Lee Canals, which divert water from the main stem of Bear River in Wyoming to irrigate lands in both Wyoming and Utah, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

"d. The Beckwith Quinn West Side Canal, which diverts water from the main stem of Bear River in Utah to irrigate lands in both Utah and

Wyoming, shall be supplied from the divertible flow allocated to the Lower Utah Section Diversions.

"e. If for any reason the aggregate of all diversions in a river section of the Upper Division does not equal the allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the Upper Division in the following order: (1) In the other river section of the same State in which the unused allocation occurs; and (2) in the river sections of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e.

"f. Water allocated to the several sections shall be distributed in each section in accordance with State law.

"2. Central Division

"a. When either the divertible flow as hereinafter defined for the Central Division is less than 870 second-feet, or the flow of the Bear River at Border Gaging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the Central Division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and from the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border shall be limited for the benefit of the State of Idaho, to not exceeding forty-three (43) percent of the divertible flow. The remaining fifty-seven (57) percent of the divertible flow shall be available for use in Idaho in the Central Division, but if any portion of such allocation is not used therein it shall be available for use in Idaho in the Lower Division.

"The divertible flow for the Central Division shall be the total of the following three items:

"(1) Diversions in second-feet in Wyoming consisting of the sum of all diversions from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smiths Fork and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border, Wyoming.

"(2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho State line near Border to Stewart Dam including West Fork Canal which diverts at Stewart Dam.

"(3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

"b. The Cook Canal, which diverts water from the main stem of the Bear River in Wyoming to irrigate lands in both Wyoming and Idaho, shall be considered a Wyoming diversion and shall be supplied from the divertible flow allocated to Wyoming.

"c. Water allocated to each State shall be distributed in accordance with State law.

"3. Lower Division

"a. When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the State official charged with the administration of public waters.

"B. The Commission shall have authority upon its own motion (1) to declare a water emergency in any or all river divisions based upon its determination that there are diversions which violate this Compact and which encroach upon water rights in a lower State, (2) to make appropriate orders to prevent such encroachments, and (3) to enforce such orders by action before State administrative officials or by court proceedings.

"C. When the flow of water in an interstate tributary across a State boundary line is insufficient to satisfy water rights on such tributary in a lower State, any water user may file a petition with the Commission alleging that by reason of diversions in an upstream State he is being deprived of water to which he is justly entitled and that by reason thereof a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds that a water emergency exists and that interstate control of water of such tributary is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to the State boundary line. The State officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses of a joint water commissioner for each tributary. The proportion of the compensation and expenses to be paid by each State shall be determined by the ratio between the number of acres therein which are irrigated by diversions from such tributary, and the total number of acres irrigated from such tributary.

"D. In preparing interstate water delivery schedules the Commission, upon notice and after public hearings, shall make findings of fact as to the nature, priority, and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that such schedules shall recognize and incorporate therein priority of water rights as adjudicated in each of the signatory States. Such findings of fact shall, in any court or before any tribunal, constitute prima facie evidence of the facts found.

"E. Water emergencies provided for herein shall terminate on September 30 of each year unless terminated sooner or extended by the Commission.

"ARTICLE V

"A. Water rights in the Lower Division acquired under the laws of Idaho and Utah covering water applied to beneficial use prior to January 1, 1976, are hereby recognized and shall be administered in accordance with State law based on priority of rights as provided in Article IV, paragraph A3. Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the respective allocations made to Idaho and Utah in this paragraph and the water allocated to each State shall be administered in accordance with State law. Subject to the foregoing provisions, the remaining water in the Lower Division, including ground water tributary to the Bear River, is hereby apportioned for use in Idaho and Utah as follows:

"(1) Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet.

"(2) Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet.

"(3) Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided by subparagraphs (1) and (2) above have been satisfied.

"(4) Any remaining water in the Lower Division after the allocations provided for in subparagraphs (1), (2), and (3) above have been satisfied shall be divided; thirty (30) percent to Idaho and seventy (70) percent to Utah.

"B. Water allocated under the above subparagraphs shall be charged against the State in which it is used regardless of the location of the point of diversion.

"C. Water depletions permitted under provisions of subparagraphs (1), (2), (3), and (4) above, shall be calculated and administered by a Commission-approved procedure.

"ARTICLE VI

"A. Existing storage rights in reservoirs constructed above Stewart Dam prior to February 4, 1955, are as follows:

"Idaho	324 acre-feet
"Utah	11,850 acre-feet
"Wyoming	2,150 acre-feet

"Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more under this paragraph for use in Utah and Wyoming; and to store in any water year in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water for use in Idaho. Such additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above

Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming.

"B. In addition to the rights defined in Paragraph A of this Article, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah are granted an additional right to store in any year 70,000 acre-feet of Bear River water for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right to store 4,500 acre-feet of Bear River water in Wyoming or Idaho for use in Idaho. Water rights granted under this paragraph and water appropriated, including ground water tributary to Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho.

"The additional storage rights provided for in this Paragraph shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam; provided, however, there shall be no diversion of water to storage above Stewart Dam under this Paragraph B when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947). Water depletions permitted under this Paragraph B shall be calculated and administered by a Commission-approved procedure.

"C. In addition to the rights defined in Article VI, Paragraphs A and B, Idaho, Utah and Wyoming are granted the right to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. The availability of such water and the operation of reservoir space to store water above Bear Lake under this paragraph shall be determined by a Commission-approved procedure. The storage provided for in this Paragraph shall be subordinate to all other storage and direct flow rights in the Bear River. Storage rights under this Paragraph shall be exercised with equal priority on the following basis: six (6) percent thereof to Idaho; forty-seven (47) percent thereof to Utah; and forty-seven (47) percent thereof to Wyoming.

"D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power and Light Company Bear Lake datum (the equivalent of elevation 5,915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation it may be

used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to Paragraph A of this Article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

"Additional Storage (Acre-feet)	Lake surface elevation Utah Power and Light Company, Bear Lake datum
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

"E. Subject to existing rights, each State shall have the use of water, including groundwater, for ordinary domestic, and stock watering purposes, as determined by State law and shall have the right to impound water for such purposes in reservoirs having storage capacities not in excess, in any case, of 20 acre-feet, without deduction from the allocation made by paragraphs A, B, and C of this Article.

"F. The storage rights in Bear Lake are hereby recognized and confirmed subject only to the restrictions hereinbefore recited.

"ARTICLE VII

"It is the policy of the signatory States to encourage additional projects for the development of the water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste, and in furtherance of such policy, authority is granted within the limitations provided by this Compact, to investigate, plan, construct, and operate such projects without regard to State boundaries, provided that water rights for each such project shall, except as provided in Article VI, paragraphs A and B, thereof, be subject to rights therefore initiated and in good standing.

"ARTICLE VIII

"A. No State shall deny the right of the United States of America, and subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person or entity of another signatory State, to acquire rights to the use of water or to construct or to participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one State for use of water in another State, either directly or by exchange. Water rights acquired for out-of-state use shall be appropriated in the State where the point of diversion is located in the manner provided by law for appropriation of water for use within such State.

"B. Any signatory State, any person or any entity of any signatory State, shall have the right to acquire in any other signatory State such property rights as are necessary to the use of water in conformity with this Compact by donation, purchase, or, as hereinafter provided through the exercise of the power of eminent domain in accordance with the law of the State in which such property is located. Any signatory State, upon the written request of the Governor of any other signatory State for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price acceptable to the requesting Governor, or if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or to the person, or entity designated by its Governor provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining such property shall be paid by the requesting State or the person or entity designated by its Governor.

"C. Should any facility be constructed in a signatory State by and for the benefit of another signatory State or persons or entities therein, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located.

"D. In the event lands or other taxable facilities are acquired by a signatory State in another signatory State for the use and benefit of the former, the users of the water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such facilities are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average of the amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the State.

"E. Rights to the use of water acquired under this Article shall in all respects be subject to this Compact.

"ARTICLE IX

"Stored water, or water from another watershed may be turned into the channel of the Bear River in one State and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of the Bear River in another State either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid. Water from another watershed or source which enters the Bear River by actions within a State may be claimed exclusively by that State and use thereof by that State shall not be subject to the depletion limitations of

Articles IV, V and VI. Proof of any claimed increase in flow shall be the burden of the State making such claim, and it shall be approved only by the unanimous vote of the Commission.

"ARTICLE X

"A. The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed.

"Name of Canal	Date of priority	Primary right second-feet	Lands irrigated	
			Acres	State
Hilliard East Fork	1914	28.00	2,644	Wyoming
Chapman	8-13-86	16.46	1,155	Wyoming
	8-13-86	98.46	6,892	Utah
	4-12-12	.57	40	Wyoming
	5- 3-12	4.07	285	Utah
	5-21-12	10.17	712	Utah
	2- 6-13	.79	55	Wyoming
	8-28-05	[1]134.00		
Francis Lee	1879	2.20	154	Wyoming
	1879	7.41	519	Utah

"[1]Under the right as herein confirmed not to exceed 134 second-feet may be carried across the Wyoming-Utah State line in the Chapman Canal at any time for filling the Neponset Reservoir, for irrigation of land in Utah and for other purposes. The storage right in Neponset Reservoir is for 6,900 acre-feet, which is a component part of the irrigation right for the Utah lands listed above.

"All other rights to the use of water carried in interstate canals and ditches, as adjudicated in the State in which the point of diversion is located, are recognized and confirmed.

"B. All interstate rights shall be administered by the State in which the point of diversion is located and during times of water emergency, such rights shall be filled from the allocations specified in Article IV hereof for the Section in which the point of diversion is located, with the exception that the diversion of water into the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal shall be under the administration of Wyoming. During times of water emergency these canals and the Lone Mountain Ditch shall be supplied from the allocation specified in Article IV for the Upper Wyoming Section Diversions.

"ARTICLE XI

"Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the State in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another State of water to which he is entitled, nor shall any such application be approved if the effect thereof will be an increase in the depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each State in Articles IV, V and VI of this Compact. The official of each State in charge

of water administration shall, at intervals and in the format established by the Commission, report on the status of use of the respective allocations.

"ARTICLE XII

"Nothing in this Compact shall be construed to prevent the United States, a signatory State or political subdivision thereof, person, corporation, or association, from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under State or Federal law or under this Compact.

"ARTICLE XIII

"Nothing contained in this Compact shall be deemed:

"1. To affect the obligations of the United States of America to the Indian tribes;

"2. To impair, extend or otherwise affect any right or power of the United States, its agencies or instrumentalities involved herein; nor the capacity of the United States to hold or acquire additional rights to the use of the water of the Bear River;

"3. To subject any property or rights of the United States to the laws of the states which were not subject thereto prior to the date of this Compact;

"4. To subject any property of the United States to taxation by the States or any subdivision thereof, nor to obligate the United States to pay any State subdivision thereof for loss of taxes.

"ARTICLE XIV

"At intervals not exceeding twenty years, the commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress.

"ARTICLE XV

"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 XVI

"Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or to the Constitution of the United States, all other severable provisions of this Compact shall continue in full force and effect.

"ARTICLE XVII

"This Compact shall be in effect when it shall have been ratified by the Legislature of each signatory State and consented to by the Congress of

the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

"In Witness Whereof, the Commissioners and their advisers have executed this Compact in five originals, one of which shall be deposited with the General Services Administration of the United States of America, one of which shall be forwarded to the Governor of each of the signatory States, and one of which shall be made a part of the permanent records of the Bear River Commission.

"Done at Salt Lake City, Utah, this 22nd day of December, 1978.

"For the State of Idaho:

"(s) Clifford J. Skinner

"(s) J. Daniel Roberts

"(s) Don W. Gilbert

"For the State of Utah:

"(s) S. Paul Holmgren

"(s) Simeon Weston

"(s) Daniel F. Lawrence

"For the State of Wyoming:

"(s) George L. Christopulos

"(s) J. W. Myers

"(s) John A. Teichert

"Approved:

"Wallace N. Jibson

"Representative of the United States of America

"Attest:

"Daniel F. Lawrence

"Secretary of the Bear River Commission."

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference and Amendments to Original Bear River Compact. Congress consented to the original Bear River Compact by the Act of March 17, 1958 (Public Law 85-348, 72 Stat. 38). The 1958 Act appears in Volume II at page 1398. Some of the major amendments to the Compact contained in the 1978 Act are: the addition of the purpose to accomplish an equitable apportionment of the waters of the Bear River among the compacting states in Article 1, paragraph K; the insertion of a new Article V; the addition of new paragraphs B and C to Article VI (formerly Article V); and the elimination of the requirement that the Bear River Commission file an annual report with the President and Governors of signatory states, formerly contained in paragraph D of Article III.

Legislative History. H.R. 4320, Public Law 96-189 in the 96th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 524. Passed House November 27, 1979. Passed Senate January 23, 1980. See also S. Rept. No. 526 on S. 1489, which was passed by the Senate on December 20, 1979.

PROTECTION OF ARCHAEOLOGICAL RESOURCES—ANIMAS-LAPLATA AND DOLORES PROJECTS

An act to more adequately protect archeological resources in southwestern Colorado. (Act of July 2, 1980, Public Law 96-301, 94 Stat. 832)

[Expenditures authorized for protection of archeological resources in Animas-LaPlata and Dolores projects—Limitation—Nonreimbursability.]—Notwithstanding the limitation on appropriations contained in section 7 of the Act of June 27, 1960, as amended (74 Stat. 220; 16 U.S.C. 469-469c), effective October 1, 1980, the Secretary of the Interior is authorized to expend from funds appropriated pursuant to the authorizations contained in the Act of September 30, 1968 (82 Stat. 897; 43 U.S.C. 620a-1), entitled "The Colorado River Basin Project Act", such sums as are necessary for the survey, recovery, protection, preservation, and display of archeological resources in the area of the Animas-LaPlata and Dolores projects of the United States Water and Power Resources Service: *Provided*, That such expenditures shall not exceed 4 per centum of the total amount authorized to be appropriated for such projects, and shall be considered nonreimbursable project costs. (94 Stat. 832)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Section 7, formerly section 4, of the Act of June 27, 1960 (Public Law 86-523, 74 Stat. 221, 16 U.S.C. § 469c(a)), referred to in the text, was renumbered and amended by section 1(9) of the Act of May 24, 1974 (Public Law 93-291, 88 Stat. 175). Section 7 provides that, for the purpose of preserving historical and archaeological data threatened by dam construction or alterations of terrain, federal agencies responsible for construction projects may assist the Secretary of the Interior and/or transfer to the Secretary not more than one per centum of the total amount authorized to be appropriated for the project, except the one per centum limitation does not apply to projects involving $50,000 or less. The 1960 Act appears in Volume III at page 1533. Section 7 appears in Supplement I as an amendment to the 1960 Act.

Reference in the Text. The statutory citation to the Act of September 30, 1968 (82 Stat. 897; 43 U.S.C. § 620a-1) contained in the text is section 501(b) of the Colorado River Basin Project Act. Section 501(b) directs the Secretary of the Interior to proceed as nearly as practicable with the construction of the Animas-LaPlata, Dolores, Dallas Creek, West Divide, and San Miguel projects (participating projects of the Colorado River Storage Project) concurrently with the construction of the Central Arizona Project, to the end that such projects will be completed no later than the date of first delivery of water from the Central Arizona Project. The Colorado River Storage Project Act (Act of April 11, 1956, 70 Stat. 105, 43 U.S.C. §§620-620o) appears in Volume II at page 1248. The Colorado River Basin Project Act (Act of September 30, 1968, 82 Stat. 886, principally classified to Chapter 32 of Title 43 of the U.S. Code, sections 1501-1514, 1521-1528, 1541-1544, and 1551-1556) appears in Volume IV in chronological order.

Legislative History. H.R. 5731, Public Law 96-301 in the 96th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 96-826. Passed House May 18, 1980. Passed Senate June 26, 1980.

LINING OF BESSEMER DITCH

An act to authorize the Secretary of the Interior to design and construct a gunite lining on certain reaches of the Bessemer Ditch in the vicinity of Pueblo, Colorado, to prevent or reduce seepage damage on adjacent properties, and for other purposes. (Act of July 9, 1980, Pub. L. 96-309, 94 Stat. 940)

[Sec. 1. Secretary of the Interior authorized to line Bessemer Ditch—Disclaimer of liability.]—The Secretary of the Interior is authorized to design and construct a gunite lining on approximately eight thousand feet of the Bessemer Ditch in the vicinity of Pueblo, Colorado, to prevent or reduce seepage damage on adjacent properties. Nothing in this Act shall be construed in any administrative or judicial proceeding as establishing congressional acquiesence or approval of any theory of Federal liability for damages or as establishing a precedent for Federal liability or responsibility in any situation similar to that addressed by this Act. (94 Stat. 940)

Sec. 2. [Lining costs included as capital costs of Fryingpan–Arkansas project—Responsibility for lining maintenance.]—The design and construction costs of the works authorized by this Act shall be included as capital costs of Pueblo Dam and Reservoir, Fryingpan–Arkansas Project, Colorado, and shall be allocated to the purposes served by Pueblo Dam and Reservoir in accordance with procedures established pursuant to Federal Reclamation Law. The Bessemer Irrigating Ditch Company, which owns, operates, and maintains the Bessemer Ditch, shall be responsible for maintaining or replacing the completed gunite lining authorized by this Act. (94 Stat. 940)

Sec. 3. [Appropriation authorization.]—There is hereby authorized to be appropriated for fiscal year 1981 for the design and construction of approximately eight thousand feet of gunite lining on the Bessemer Ditch in the vicinity of Pueblo, Colorado, the sum of $1,500,000 (based on October 1979 prices), plus or minus such amounts, if any, as may be justified by reason of changes of construction costs as indicated by engineering cost indices applicable to the type of construction involved. (94 Stat. 940)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Fryingpan–Arkansas Project, referred to in Section 2 of the text, was authorized by the Act of August 16, 1962 (76 Stat. 389), which appears in Volume III at page 1670.

Legislative History. S. 2546, Public Law 96-309 in the 96th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-750. Passed Senate May 22, 1980. Passed House June 27, 1980.

TRINITY RIVER STREAM RECTIFICATION

An act to authorize Federal participation in stream rectification, Trinity River Division, Central Valley project, California, and for other purposes. (Act of September 4, 1980, Public Law 96-335, 94 Stat. 1062)

[Sec. 1. Secretary authorized to design, construct, operate and maintain sand dredging system and debris dam—Contract authorized with State of California for design, construction, operation, or maintenance of sand dredging system.]—The Secretary of the Interior, acting through the Commissioner of Reclamation, is authorized to design, construct, operate, and maintain, or to contract with the State of California for the design, construction, operation, or maintenance of, a sand dredging system on the Trinity River immediately downstream from Grass Valley Creek, a tributary of the Trinity River, and a debris dam and associated facilities on Grass Valley Creek, in Trinity County, California, in general conformity to the plan of development described and set forth in the grass Valley Creek Sediment Control Study, April 1978, prepared for the Trinity River Basin Fish and Wildlife Task Force: *Provided*, That any such contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. (94 Stat. 1062)

Sec. 2. [Contract with State of California shall provide for matching funds.]—The contract authorized by section 1 of this Act shall provide that the State of California, on a dollar-for-dollar basis, will match the funds provided by the Water and Power Resources Service for constructing, operating, and maintaining the sand dredging system. (94 Stat. 1062)

Sec. 3. [Authorization of appropriations—All costs nonreimbursable—Preconditions to expenditure of funds.]—There is authorized to be appropriated for fiscal year 1982 and thereafter, to remain available until expended the sum of $3,500,000 (April 1978 price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs indexes applicable to the type of construction involved herein. There are also authorized to be appropriated such sums as may be required for the Federal share of operation and maintenance. All costs incurred pursuant to this Act shall be nonreimbursable and nonreturnable. No funds shall be expended hereunder until the Board of Supervisors of Trinity County adopts adequate timber road and subdivision standards to protect the Grass Valley Creek watershed, and until an agreement has been executed with the State of California which shall provide that the State of California, on a dollar-for-dollar basis, will match the funds provided by the Water and Power Resources Service for constructing, operating, and maintaining the sand dredging system. (94 Stat. 1062)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 507, Public Law 96-335 in the 96th Congress. Reported in

House from Interior and Insular Affairs; H.R. Rept. No. 96-514. Passed House October 22, 1979. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-893. Passed Senate, amended, August 18, 1980. House concurs in Senate amendment August 21, 1980.

AMEND COLORADO RIVER BASIN SALINITY CONTROL ACT; AMEND SMALL RECLAMATION PROJECTS ACT

An act to increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the Act of June 24, 1974; 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes. (Act of September 4, 1980, Public Law 96-336, 94 Stat. 1063)

[T]he Act of June 24, 1974 (hereafter referred to as the "Act"), is hereby amended as follows:

Sec. 1. [Nonreimbursability of desalting plant costs—Authorize use of Navajo Station power and energy for desalting—Conditions on such use—Precondition of alternate sources of supply analysis—Authorization of future purchases of supplemental power and energy.]—Section 101(b)(2) is amended, by inserting "(A)" after "(2)", by deleting the last sentence of the paragraph, and by adding thereafter the following:

"(B) The Secretary is authorized to use electrical power and energy available from the Navajo Generating Station which is in excess of the Central Arizona Project pumping requirements for the purpose of supplying power and energy requirements of the desalting plant and protective pumping well field constructed pursuant to title I of the Act: *Provided*, That revenues credited to the Lower Colorado River Basin Development Fund shall not be diminished below those amounts which would have accrued had the power been marketed at the rate determined by the Secretary of Energy for the sale of power from the Navajo Generating Station to utilities and public entities, as a result of the use of power and energy for the desalting, protective pumping works, and other uses authorized by law, and that power and energy from the Navajo Generating Station shall be used first to meet the pumping requirements of the Central Arizona Project and after those needs have been met, for the desalting and protective pumping facilities constructed pursuant to title I of the Act, and finally for other uses: *Provided further*, That prior to obtaining power from the Navajo Generating Station under the authority of this subsection, the Secretary shall complete an analysis of alternative sources of supply, including but not limited to the possibility of developing an agreement with the Republic of Mexico whereby the United States (or a non-Federal entity) would enter into contractual arrangements with Mexico for a sufficient supply of power to operate the desalting plant, the regulatory pumping fields and appurtenant facilities.

"(C) Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriation Acts, the Secretary of the Interior is authorized to purchase supplemental power and energy as required for the purposes of supplying the power and energy requirements of the desalting plant and protective pumping well field.". (94 Stat. 1063; 43 U.S.C. § 1571(b))

EXPLANATORY NOTE

Reference in the Text. The Colorado River Basin Salinity Control Act (Act of June 24, 1974, Public Law 93-320, 88 Stat. 266), which is amended by sections 1-7 of this Act, appears in Volume IV in chronological order.

Sec. 2. [Waters used for mitigation of habitat losses.]—Section 101(c) is amended by inserting ", Colorado River waters used for the mitigation of fish and wildlife habitat losses" after "from the desalting plant" in two places. (94 Stat. 1063; 43 U.S.C. § 1571(c))

Sec. 3. [Contract terms for water delivery from well field for municipal, industrial, or irrigation purposes—Acreage limitations not applicable to private lands.]—Section 103(a) of the Act is amended by adding a new subsection (4) as follows:

"(4) Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts under the terms and conditions of the Act of June 17, 1902 (43 U.S.C. 371 et. seq.) as amended and supplemented for the delivery of water from said well field to entities within the United States for municipal and industrial or irrigation purposes: *Provided*, That such contracts for municipal and industrial purposes shall contain terms and conditions as substantially provided in section 9(c)(1) of the Reclamation Project Act of 1939, and that contracts for replacement irrigation water supplies to prevent damage to existing water users on privately developed lands include water charges no greater than if such water users had continued to pump their own wells without the United States lowering the water table and that the acreage limitation and related provisions of the Reclamation Law will not be applicable to such privately developed lands: *Provided further*, That no contract shall be entered which will impair the ability of the United States to continue to deliver to Mexico on the land boundary at San Luis and in the Limitrophe Section of the Colorado River downstream from Morelos Dam approximately one hundred and forty thousand acre-feet annually, consistent with the terms contained in Minute No. 242 of the IBWC." (94 Stat. 1064; 43 U.S.C. § 1573(a))

EXPLANATORY NOTE

Reference in the Text. Section 9(c)(1) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1194; 43 U.S.C. § 485h(c)), referred to in the text, specifies the repayment provisions for fixed obligation contracts to furnish water for municipal water supply or miscellaneous purposes. The 1939 Act appears in Volume I at page 634.

Sec. 4. [Disposal of lands and facilities—Revenues credited to Treasury General Fund.]—A new section 106 shall be added to the Act, as follows, and succeeding sections shall be numbered accordingly:

"Sec. 106. The Secretary is hereby authorized to administer and dispose of lands and interests in lands acquired, and facilities constructed under this title, and revenues received in connection with this authority shall be credited to the general fund of the Treasury.". (94 Stat. 1064; 43 U.S.C. § 1576)

Sec. 5. [Increased authorization of appropriations—Implement improved desalinization techniques into plant design.]—Section 108 of the Act is changed to section 109 and effective October 1, 1979, is amended by striking the first sentence and inserting in lieu thereof: "There is hereby authorized to be appropriated the sum of $356,400,000 for the construction of the works and accomplishment of the purposes authorized in sections 101, 102, 103, and 110, of which $3,579,000 is authorized for mitigation of fish and wildlife losses associated with replacement of the Coachella Canal in California, and $6,960,000 is authorized for mitigation of fish and wildlife losses associated with the Desalting Complex Unit and the Protective and Regulatory Pumping Unit in Arizona, based on January 1979, prices plus or minus such amounts as may be justified by reason of ordinary fluctuation in construction costs involved therein, and such sums as may be required to operate and maintain such works and to provide for such modifications as may be made pursuant to section 104. In order to provide for the utilization of significant improvements in desalinization technologies which may have been developed since the Bureau's evaluation, the Secretary is directed to evaluate such cost effective improvements and implement such improved designs into the plant operations when the evaluation indicates that cost savings will result: *Provided, however,* That no more than five percent of the amount authorized to be appropriated is used for these purposes.". (94 Stat. 1064; 43 U.S.C. § 1579)

Sec. 6. [Authorization of measures to mitigate loss of fish and wildlife habitat—Costs nonreimbursable.]—A new section 110 shall be added to the Act, as follows:

"**Sec. 110.** Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriate Acts, in order to provide measures determined by the Secretary of the Interior to be appropriate to mitigate loss of fish and wildlife habitat associated with other measures taken under this title:

"(a) The Secretary is authorized to—

"(1) acquire lands by purchase, eminent domain, or exchange;

"(2) dispose of land, facilities, and equipment;

"(3) construct, operate, maintain, and make replacements of facilities: *Provided, however,* That no funds will be provided for operation, maintenance, or replacement of non-Federal facilities.

"(b) All costs authorized by this section are nonreimbursable.". (94 Stat. 1065; 43 U.S.C. § 1579)

Sec. 7. [Definitions—Navajo Generating Station—Terms defined in Colorado River Compact.]—A new section 111 shall be added to the Act, as follows:

"**Sec. 111.** As used in this title:

"(a) Navajo Generating Station means—

"(1) the United States entitlement to a portion of the output of power and energy from the Navajo Generating Station, Page, Arizona, pursuant to United States participation in that generating station;

"(2) in the event that said United States entitlement is integrated with other generating facilities, then Navajo Generating Station means that amount of power and energy from the integrated system which is attributable to the United States Navajo entitlement;

"(3) when the Navajo Generating Station is replaced at the end of its useful life or an alternative resource is established, then Navajo Generating Station means an amount of power and energy equivalent to the present United States entitlement from Navajo, from the replacement resource.

"(b) All terms used herein that are defined in the Colorado River Compact shall have the meanings therein defined.". (94 Stat. 1065; 43 U.S.C. § 1580)

Sec. 8. [Increase in appropriations authorized for Small Reclamation Projects Act—No interest on repayment of sums for portion of project providing benefits to U.S. facility.]—The Small Reclamation Projects Act of 1956 (70 Stat. 1044) as amended, is further amended as follows:

(a) Effective October 1, 1980, section 10, as amended, is further amended by deleting "$400,000,000" and inserting in lieu thereof the amount of "$600,000,000". (94 Stat. 1065; 43 U.S.C. § 422j)

(b) Subsection (c) of section 5, as amended, is further amended by adding the following: "Except that portion of said allocation attributable to furnishing benefits to a facility operated by an agency of the United States, which portion shall bear no interest;". (94 Stat. 1065; 43 U.S.C. § 422e)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions relating to the Colorado River Basin Salinity Control Act are found under the Act of June 24, 1974 in Volume IV. Annotations of opinions relating to the Small Reclamation Projects Act are found in Volume II at pages 1332, 1336 and 1338, and in Supplement I under "August 6, 1956—Small Reclamation Projects Act."

Legislative History. S. 496, Public Law 96-336 in the 96th Congress. Reported in Senate from Energy and Natural Resources, May 15, 1979; S. Rept. No. 96-181. Passed Senate June 4, 1979. Passed House, amended, February 7, 1980, in lieu of H.R. 2609, as passed. Senate concurred in House amendments with amendments, June 24, 1980. House concurred in Senate amendments, August 21, 1980. Companion bill H.R. 2609 reported in House from Interior and Insular Affairs, May 15, 1979, H.R. Rept. No. 96-177. Passed House February 7, 1980.

WIND ENERGY SYSTEMS ACT OF 1980

[Extracts from] An act to provide for an accelerated program of wind energy research, development, and demonstration, to be carried out by the Department of Energy with the support of the National Aeronautics and Space Administration and other Federal agencies, and for other purposes. (Act of September 8, 1980, Public Law 96-345, 94 Stat. 1139)

[Sec. 1. Short title.] This Act may be cited as the "Wind Energy Systems Act of 1980. (94 Stat. 1139; 42 U.S.C. § 9201, note)

FINDINGS AND PURPOSE

Sec. 2.(a)

* * * * *

(b) [Eight-year Program—Purpose.]—It is declared to be the policy of the United States and the purpose of this Act to establish during the next eight years an aggressive research, development, demonstration, and technology applications program for converting wind energy into electricity and mechanical energy. It is declared to be the further policy of the United States and the purpose of this Act that the objectives of such program are—

(1) to reduce the average cost of electricity produced by installed wind energy systems, by the end of fiscal year 1988, to a level competitive with conventional energy sources;

(2) to reach a total megawatt capacity in the United States from wind energy systems, by the end of fiscal year 1988, of at least eight hundred megawatts, of which at least one hundred megawatts are provided by small wind energy systems; and

(3) to accelerate the growth of a commercially viable and competitive industry to make wind energy systems available to the general public as an option in order to reduce national consumption of fossil fuel.

DEFINITIONS

Sec. 3. For purposes of this Act—

(1) the term "wind energy system" means a system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use;

(2) the term "small wind energy system" means a wind energy system having a maximum rated capacity of one hundred kilowatts or less;

(3) the term "large wind energy system" means a wind energy system which is not a small wind energy system;

* * * * *

(7) the term "Secretary" means the Secretary of Energy. (94 Stat. 1140; 42 U.S.C. § 9201)

* * * * *

TECHNOLOGY APPLICATION PROGRAMS

Sec. 6.

* * * * *

(g) [Arrangements with appropriate Federal agencies.]—(1) In carrying out his duties under this Act, the Secretary is authorized to provide funds for the accelerated procurement and installation of small and large wind energy systems by Federal agencies.

(2) The Secretary is authorized to enter into arrangements with appropriate Federal agencies, including the Water and Power Resources Services and the Federal power marketing agencies for large wind energy systems, to carry out such projects and activities as may be appropriate for the broad technology applications of small and large wind energy systems which are suitable and effective for use by such Federal agencies.

(h) [Observation, reports, and public inspection.]—The terms and conditions prescribed by the Secretary under this subsection shall require such observation, monitoring, and reporting requirements as the Secretary deems necessary for a period of five years and shall provide for members of the public to view and inspect the system under reasonable conditions.

(i) [Terminations.]—New Federal assistance for technology applications systems shall terminate upon the appropriate determination by the Secretary, in the annual update of the comprehensive program management plan pursuant to section 4. Termination of the small wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1985, whichever occurs first. Termination of the large wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1988, whichever occurs first. (94 Stat. 1143; 42 U.S.C. § 9205)

* * * * *

GENERAL PROVISIONS

Sec. 13. (a) Nothing in this Act shall be construed as preventing the Secretary from undertaking projects or activities in addition to those specified in this Act if such projects or activities appropriately further the purposes set forth in this subsection. (94 Stat. 1146; 42 U.S.C. § 9212)

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 5892, Public Law 96-345 in the 96th Congress. H.R. Rept. No. 96-662; S. Rept. No. 96-753; H.R. Rept. No. 96-1217 (conference report).

WEB RURAL WATER DEVELOPMENT PROJECT

[Extract from] The Rural Development Policy Act of 1980, an act to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for Title V of the Rural Development Act of 1972, and for other purposes. (Act of September 24, 1980, Public Law 96-355, 94 Stat. 1171).

* * * * *

Sec. 9. [Authorization for appropriations for planning and construction—Cooperative memoranda of understanding between Secretaries of Interior and Agriculture—Planning and development pursuant to rules and regulations of the Department of Agriculture.]—(a) There are authorized to be appropriated to the Secretary of the Interior for the fiscal year ending September 30, 1981, $1,900,000, which shall be used for initial planning and construction of a rural water treatment and distribution system in portions of, but not limited to, Walworth, Edmunds, Brown, Campbell, Potter, McPherson, Faulk, Hand, Spink, and Day Counties in South Dakota that will furnish water for domestic and other purposes, hereafter referred to in this section as "the WEB Rural Water Development Project", as generally proposed by the WEB Water Development Association, Incorporated, and as described in the special report by the Association of January 1980.

(b) Effective October 1, 1981, there are authorized to be appropriated to the Secretary of the Interior for the further planning and construction of the WEB Rural Water Development Project $68,100,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1980, as indicated by the engineering cost indices applicable to the types of construction involved herein.

(c) Any funds appropriated under this section shall remain available until expended.

(d) The Secretary of the Interior may enter into cooperative memoranda of understanding with the Secretary of Agriculture as may be required to provide services to carry out the purposes of this section.

(e) The Secretary of the Interior shall use funds appropriated under this Act to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act, except to the extent such Act or rules or regulations promulgated thereunder are inconsistent with the provisions of this section. Such funds shall be made available in a combination of grants and loans that will provide grants for not less than 75 per centum of eligible development costs and such loans as may be

necessary to plan and construct the WEB Rural Water Development Project. (94 Stat. 1175; § 2, Act of Sept. 30, 1982, Pub. L. 97-273, 96 Stat. 1181)

EXPLANATORY NOTES

Background. The WEB Rural Water Development Project would furnish water by pipeline to meet rural and urban needs, excluding irrigation, in certain counties in South Dakota. "WEB" stands for Walworth, Edmunds and Brown Counties in South Dakota, three of the counties that would be served by the project.

Not Codified. Section 9 of the Rural Development Policy Act of 1980 is not codified in the U.S. Code.

1982 Amendment. Section 2 of the Act of September 30, 1982 (Public Law 97-273, 96 Stat. 1181) amended section 9 of the Rural Development Policy Act of 1980 by: (1) deleting the proviso in subsection (b) that the authorization for appropriations in the amount of $68.1 million shall terminate if legislation deauthorizing the Oahe Unit of the Pick-Sloan Missouri Basin program has not been enacted by September 30, 1981; (2) deleting the requirement in subsection (d) that the Secretary of the Interior transfer any funds appropriated to the Secretary of Agriculture; and (3) deleting the first sentence of subsection (e) requiring the Secretary of Agriculture to use transferred funds for necessary administrative expenses and financial assistance to plan and develop the WEB Project pursuant to Department of Agriculture rules and regulations and inserting in lieu thereof the first sentence of subsection (e) as it appears in the text above. The 1982 Act appears in Volume IV in chronological order.

Reference in the Text. The Consolidated Farm and Rural Development Act (title III, Act of August 8, 1961, Public Law 87-128, 75 Stat. 307, 7 U.S.C. § 1926 et seq.), formerly known as the Consolidated Farmers Home Administration Act of 1961, as amended, referred to in subsection (e) of the text, deals with the authority of the Secretary of Agriculture to make and insure loans and provide credit services to farmers. Extracts from the 1961 Act appear in Volume III at page 1606 and in Supplement I.

Legislative History. S. 670, Public Law 96-355 in the 96th Congress. Reported in Senate from Agriculture, Nutrition, and Forestry May 16, 1979; S. Rept. No. 96-187. Passed Senate June 14, 1979. H.R. 3580 reported in House from Agriculture June 8, 1979; H.R. Rept. No. 96-259. Passed House September 15, 1980. Passage vacated and S. 670, amended to contain text of H.R. 3580, passed in lieu thereof September 15, 1980. Senate concurs in House amendment September 16, 1980.

FISH AND WILDLIFE CONSERVATION ACT OF 1980

[Extracts from] An act to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes. (Act of September 29, 1980, Public Law, 96-366, 94 Stat. 1322)

[Sec. 1. Short title.]—This Act may be cited as the "Fish and Wildlife Conservation Act of 1980". (94 Stat. 1322; 16 U.S.C. § 2901 note)

Sec. 2. [Findings on nongame fish and wildlife—Purpose of Act—Conservation of nongame fish and wildlife and their habitats.]—(a) The Congress finds and declares the following:

(1) Fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic, and scientific value to the Nation.

(2) The improved conservation and management of fish and wildlife, particularly nongame fish and wildlife, will assist in restoring and maintaining fish and wildlife and in assuring a productive and more esthetically pleasing environment for all citizens.

(3) Many citizens, particularly those residing in urban areas, have insufficient opportunity to participate in recreational and other programs designed to foster human interaction with fish and wildlife and thereby are unable to have a greater appreciation and awareness of the environment.

(4) Historically, fish and wildlife conservation programs have been focused on the more recreationally and commercially important species within any particular ecosystem. As a consequence such programs have been largely financed by hunting and fishing license revenues or excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the conservation needs of nongame fish and wildlife.

(5) Each State should be encouraged to develop, revise, and implement, in consultation with appropriate Federal, State, and local and regional agencies, a plan for the conservation of fish and wildlife, particularly those species which are indigenous to the State.

(b) It is the purpose of this Act—

(1) to provide financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife; and

(2) to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act. (94 Stat. 1322; 16 U.S.C. § 2901)

Sec. 3. [Definitions.]—As used in this Act—

(1) The term "approved conservation plan" means the conservation

plan of a State approved by the Secretary pursuant to section 5(a) of this Act.

(2) The term "conservation plan" means a plan developed by a State for the conservation of fish and wildlife which meets the requirements set forth in section 4.

(3) The terms "conserve", "conserving", and "conservation" mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the ecological, educational, esthetic, cultural, recreational, and scientific enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(4) The term "designated State agency" means the commission, department, division, or other agency of a State which has primary legal authority for the conservation of fish and wildlife. If any State has placed such authority in more than one agency, such term means each such agency acting with respect to its assigned responsibilities but such agencies, for purposes of this Act, shall submit a single conservation plan.

(5) The term "fish and wildlife" means wild vertebrate animals that are in an unconfined state, including, but not limited to, nongame fish and wildlife.

(6) The term "nongame fish and wildlife" means wild vertebrate animals that are in an unconfined state and that—

(A) are not ordinarily taken for sport, fur, or food, except that if under applicable State law, any of such animals may be taken for sport, fur, or food in some, but not all, areas of the State, any of such animals within any area of the State in which such taking is not permitted may be deemed to be nongame fish and wildlife;

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)).

Such term does not include any domesticated species that has reverted to a feral existence.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. (94 Stat. 1323; 16 U.S.C. § 2902)

Sec. 4. [Elements and requirements of State conservation plans for nongame fish and wildlife.]—The conservation plan for any State must—

(1) provide for the vesting in the designated State agency of the overall responsibility for the development and revision of the conservation plan;

(2) provide for an inventory of the nongame fish and wildlife, and such other fish and wildlife as the designated State agency deems appropriate, that are within the State and are valued for ecological, educational, esthetic, cultural, recreational, economic, or scientific benefits by the public;

(3) with respect to those species identified under paragraph (2) (hereinafter in this section referred to as "plan species"), provide for—

(A) the determination of the size, range, and distribution of their populations, and

(B) the identification of the extent, condition, and location of their significant habitats;

(4) identify the significant problems which may adversely affect the plan species and their significant habitats;

(5) determine those actions which should be taken to conserve the plan species and their significant habitats;

(6) establish priorities for implementing the conservation actions determined under paragraph (5);

(7) provide for the monitoring, on a regular basis, of the plan species and the effectiveness of the conservation actions determined under paragraph (5);

(8) provide for plan review and revision, if appropriate, at intervals of not more than 3 years;

(9) ensure that the public be given opportunity to make its views known and considered during the development, revision, and implementation of the plan; and

(10) provide that the designated State agency consult, as appropriate, with Federal agencies, and other State agencies during the development, revision, and implementation of the plan, in order to minimize duplication of efforts and to ensure that the best information is available to all such agencies. (94 Stat. 1323; 16 U.S.C. § 2903)

Sec. 5. [Approval or disapproval by Secretary of Interior of State nongame conservation plans—Statement of reasons required for disapproval—Effects of approval—Eligibility of conservation actions for reimbursement as nongame fish and wildlife projects where no approved plan.]—(a) (1) Any State may apply to the Secretary for approval of a conservation plan.

(2) Applications for the approval of conservation plans shall be made and reviewed by the Secretary in such manner as the Secretary shall by regulation prescribe.

(3) As soon as practicable, but not later than 180 days, after the date on which a State submits (or resubmits in the case of prior disapproval) an application for the approval of a conservation plan the Secretary shall—

(A) approve the conservation plan, and designate it as an approved conservation plan, if he determines that the plan—

(i) meets the requirements set forth in section 4, and

(ii) is substantial in character and design; or

(B) disapprove the conservation plan if he determines that—

(i) the plan does not meet the requirements set forth in section 4, or

(ii) to implement any part of the plan on the basis of the specifications, determinations, identifications, or priorities therein would threaten the natural stability and continued viability of any of the plan species concerned.

If the Secretary disapproves a plan, he shall give the State concerned a written statement of the reasons for disapproval and provide the State opportunity for consultation with respect to deficiencies in the plan and the modifications required for approval.

(b) If the Secretary approves that conservation plan of any State under subsection (a)—

(1) that portion of such plan that pertains to wildlife conservation shall be deemed to be an approved plan for purposes of section 6(a)(1) of the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act; and

(2) that portion of such plan that pertains to fish conservation shall be deemed to an approved plan for the purposes of section 6 (a)(1) of the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell–Johnson Sport Fish Restoration Act.

(c) If the Secretary approves the conservation plan of any State under subsection (a), those conservation actions set forth in the plan which pertain to nongame fish and wildlife shall be deemed to be eligible as nongame fish and wildlife projects for which reimbursement is available under section 6.

(d) In the absence of an approved conservation plan, and on a showing of need by the State, the Secretary may deem certain conservation actions to be nongame fish and wildlife projects for which reimbursement is available under section 6(a)(3) if they—

(1) are consistent with such of the requirements set forth in section 4 as may be appropriate, including, but not limited to, the requirements in paragraphs (3), (4), (5), and (7) of such section; and

(2) are substantial in character and design. (94 Stat. 1324; 16 U.S.C. § 2904)

EXPLANATORY NOTE

References in the Text. The Pittman–Robertson Act (50 Stat. 917), referred to in subsection (b) of the text, outlines a method States may use to obtain benefits from the Federal Government for State fish and wildlife management plans. The Dingell–Johnson Act (64 Stat. 430), also referred to in subsection (b) of the text, outlines a method States may use to obtain benefits from the Federal Government for State fish restoration programs. Neither Act appears herein.

* * * * *

Sec. 9. [Federal government authorized to provide resources to States for development of conservation plans.]—The Secretary and the chief

executive officer of any other appropriate Federal department or agency may loan to any State such personnel and equipment of the department or agency, share such scientific or other appropriate information, and provide such other assistance as the Secretary or officer determines appropriate for purposes of assisting any State to develop or revise conservation plans. (94 Stat. 1329; 16 U.S.C. § 2908)

Sec. 10. [State wildlife law and authority of Secretary of Agriculture not affected.]—Nothing in this Act shall be construed as affecting—

(1) the authority, jurisdiction, or responsibility of the State to manage, control, or regulate fish and resident wildlife under State law;

(2) any requirement under State law that lands, waters, and interests therein may only be acquired for conservation purposes if the owner thereof is a willing seller; and

(3) the authority of the Secretary of Agriculture under the Act of March 2, 1931 (46 Stat. 1468-1469; 7 U.S.C. 426-426b). (94 Stat. 1329; 16 U.S.C. § 2909)

EXPLANATORY NOTE

Reference in the Text. The Act of March 2, 1931 (46 Stat. 1468, 7 U.S.C. §§ 426-426b), referred to in the text, directs the Secretary of Agriculture to investigate and employ control methods for predatory and other animals injurious to economically beneficial plant and animal species. The 1931 Act does not appear herein.

* * * * *

Sec. 12. [Director of Fish and Wildlife Service to develop methods for funding state conservation plans—Reports to Congress.]—The Director of the United States Fish and Wildlife Service, in consultation with affected parties, shall conduct a comprehensive study to determine the most equitable and effective mechanism for funding State conservation plans and actions under this Act, including, but not limited to, funding by means of an excise tax on appropriate items. On or before December 31, 1984, the Director shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives the results of such study, together with his recommendations with respect thereto. (94 Stat. 1330; 16 U.S.C. § 2911)

EXPLANATORY NOTES

1982 Amendment. Section 6 of the Act of December 31, 1982 (Public Law 97-396, 96 Stat. 2006) amended section 12 by deleting "out of funds available for the administration of this Act" following "shall conduct" and by substituting "December 31, 1984" for "the expiration of the 30-month period following the date of enactment of this Act" following "On or before". The 1982 Act does not appear herein.

Legislative History. H.R. 3292, Public Law 96-366 in the 96th Congress. Reported in House from Merchant Marine and Fisheries; H.R. Rept. No. 96-168. Passed House July 9, 1979. S. 2181 reported in Senate from Environment and Public Works; S. Rept. No. 96-768. S. 2181 passed Senate May 22, 1980. H.R. 3292 passed Senate, amended, September 9, 1980. House agrees to Senate amendments September 16, 1980.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1981

[Extracts from] An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes. (Act of October 1, 1980, Public Law 96-367, 94 Stat. 1331)

TITLE I—DEPARTMENT OF ENERGY

* * * * *

BONNEVILLE POWER ADMINISTRATION FUND

[Transmission facilities approved.]—Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for construction of Southwest Oregon Service—Buckley-Summer Lake 500 KV transmission line and related facilities; (94 Stat. 1334)

* * * * *

TITLE III—DEPARTMENT OF THE INTERIOR

WATER AND POWER RESOURCES SERVICE

* * * * *

CONSTRUCTION PROGRAM

* * * * *

[Archeological recovery at New Melones Reservoir.]—*Provided further,* That of the total amount appropriated in this Act not to exceed $2,000,000 is for archeological research and recovery operations, in addition to any funds otherwise authorized for such operations, at New Melones Dam and Reservoir, California, authorized by the Flood Control Act of 1962: (94 Stat. 1340)

[Red Fleet Dam—Nonreimbursable costs.]—*Provided further,* That the Secretary of the Interior is authorized and directed to allocate as nonreimbursable and nonreturnable that part of the cost of constructing Red Fleet Dam on the Jensen Unit, Central Utah Project, which resulted from changes in the design to recognize state-of-the-art criteria deemed necessary for dam safety: (94 Stat. 1340)

* * * * *

[Improvement of Gila River Channel.]—*Provided further*, That of the amount herein appropriated not to exceed $6,000,000 for the Wellton–Mohawk Irrigation and Drainage District, Gila Project, Arizona, shall be available for improvement of the Gila River Channel to facilitate drainage of lands within the District under a repayment obligation heretofore established by existing contract between the Secretary of the Interior and the District: (94 Stat. 1340)

[Fremont–Madison Irrigation District rehabilitation program.]—*Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to initiate a rehabilitation and betterment program with the Fremont–Madison Irrigation district to rehabilitate the facilities of the Marysville, Farmer's Own, Yellowstone, Squirrel Creek, and Silky Canal Companies under the Act of October 7, 1949 (63 Stat. 724), as amended, to be repaid full by the lands served and under conditions satisfactory to the Secretary of Interior. (94 Stat. 1340)

EXPLANATORY NOTE

Reference in the Text. The Act of October 7, 1949, referred to in the text, is the Rehabilitation and Betterment Act. The 1949 Act appears in Volume II at page 969.

* * * * *

[Short title.]—This Act may be cited as the "Energy and Water Development Appropriation Act, 1981". (94 Stat. 1346)

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted 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. 7590, Public Law 96-367 in the 96th Congress. H.R. Rept. No. 96-1093. S. Rept. No. 96-927. H.R. Rept. No 96-1366 (conference report).

FEASIBILITY STUDIES

An act to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments, and for other purposes. (Act of October 3, 1980, Public Law 96-375, 94 Stat. 1505)

[Sec. 1. Feasibility studies authorized.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following proposals:

(1) Hungry Horse Project, Hungry Horse Powerplant Enlargement and Reregulating Reservoir, located on the South Fork of the Flathead River in Flathead County, Montana.

(2) Boise Project, Power and Modification Study, located in southwestern Idaho (Ada, Boise, Canyon, Elmore, Gen, Payette, and Valley Counties) and in eastern Oregon (Malheur County).

(3) San Francisco Bay Area Waste Water Reclamation Project, located in the San Francisco Bay area and western San Joaquin Valley of California.

(4) San Joaquin Valley Drainage Investigation with a study area in the San Joaquin River basin, Tulare basin, and the Sacramento–San Joaquin Delta–Suisun Bay area of California.

(5) Delta Overland Water Service Facilities, located in the Sacramento, San Joaquin, Solano, and Contra Costa Counties of California.

(6) Chino Valley Project, located in north central Yavapai County and south central Coconino County in Arizona.

(7) North Platte River Hydroelectric Power Study, Pick–Sloan Missouri Basin Program, Western Division, located in Natrona and Carbon Counties, Wyoming.

(8) Wind-Hydroelectric Energy Project in Carbon and Albany Counties, Wyoming.

(9) Lake Meredith Salinity Project, in Quay County, New Mexico, and Oldham, Potter, Moore, Carson, and Hutchinson Counties in Texas.

(10) Colorado–Big Thompson Powerplants of the Pick–Sloan Missouri Basin Program in Colorado.

(11) The relocation of the intake of the Contra Costa County Water District Canal from Rock Slough to the vicinity of the Clifton Court Forebay in Contra Costa County, California.

(12) The Los Vaqueros Dam, pump-generating plant, and related features at a site approximately eight miles west of the Clifton Court Forebay in Contra Costa County, California.

(13) The obtaining of a water supply of up to ten thousand acre-feet per year for existing and potential domestic, recreational, and municipal water users along the Colorado River in California who do not hold water rights or whose rights are insufficient to meet their requirements.

(14) To determine the cause and extent of the high groundwater levels which developed in and adjacent to the town of Moses Lake, Washington,

following the initiation of irrigation of the lands in and adjacent to the town and determine by the studies authorized herein measures to resolve the problems caused by the high water levels in the area.

(15) The Cle Elum Dam and Tieton Dam powerplants, Yakima Project, Washington.

(16) The Owyhee Dam powerplant, Owyhee Project, Oregon.

(17) The Wickiup Dam powerplant, Deschutes Project, Oregon.

(18) The Tiber Dam powerplant, Lower Marias Unit, Marias Division, Pick–Sloan Missouri Basin Program, Montana.

(19) The New Siphon Drop powerplant, Yuma Project, Arizona–California.

(20) The Guernsey Dam powerplant enlargement, North Platte Project, Wyoming.

(21) Increasing the height of the Theodore Roosevelt Dam, Salt River Project, Arizona.

(22) The Sly Park Extension Unit, American River Division, Central Valley Project, California.

(23) The Prineville Dam powerplant, Crooked River Project, Oregon. (94 Stat. 1505)

Sec. 2. [Feasibility studies—Shasta Dam enlargement,—California to participate in studies and share study costs.]—(a) The Secretary of the Interior is hereby authorized to engage in feasibility studies relating to enlarging Shasta Dam and Reservoir, Central Valley Project, California, or to the construction of a larger dam on the Sacramento River, California, to replace the present structure.

(b) The Secretary of the Interior is further authorized to engage in feasibility studies for the purpose of determining the potential costs, benefits, environmental impacts, and feasibility of using the Sacramento River for conveying water from the enlarged Shasta Dam and Reservoir or the larger dam to points of use downstream from the dam.

(c) Before funds are expended for the feasibility studies authorized by this section, the State of California shall agree to participate in the studies and to participate in the costs of the studies. The State's share of the costs may be partly or wholly in the form of services directly related to the conduct of the studies. (94 Stat. 1506)

Sec. 3. [Review and revise feasibility study—Kellogg Unit, CVP.]—The Secretary of the Interior is authorizeds to review and revise, as may be necessary, the feasibility study of the Kellogg Unit, Central Valley Project, Contra Costa County, California. (94 Stat. 1506)

Sec. 4. [Contra Costa Canal relocation, Los Vaqueros Dam, Kellogg Unit—Impacts must be described—Protection of Delta water quality and ecology.]—In preparing the studies and review authorized by subsections (11) and (12) of section 1 and section 3, the Secretary of the Interior shall fully describe all potential beneficial or detrimental impacts resulting from the construction or operation of the projects under study. The Secretary shall further make recommendations to the Congress for assuring that neither the construction nor the operation of any such project results in the

deterioration of the water quality and ecology of the Sacramento–San Joaquin Delta or the San Francisco Bay estuarine system. (94 Stat. 1506)

Sec. 5. [Concessionaires at Lake Berryessa authorized—Permanent facilities are property of concessionaires.]—(a)Notwithstanding any other provision of law, the Secretary of the Interior is authorized to enter into new negotiated concession agreements with the present concessionaires at Lake Berryessa, California. Such agreements shall be for a term ending not later than May 26, 1989, and may be renewed at the request of the concessionaire with the consent of the Secretary of the Interior for no more than two consecutive terms of 10 years each. Concession agreements may be renegotiated preceding renewal. Such agreements must comply with the 1959 National Park Service Public Use Plan for Lake Berryessa, as amended, and with the Water and Power Resources Service Reservoir Area Management Plan: *Provided*, That the authority to enter into contracts or agreements to incur obligations or to make payments under this section shall be effective only to the extent and in such amounts as are provided in advance in appropriation Acts.

(b) Notwithstanding any other laws to the contrary, all permanent facilities placed by the concessionaires in the seven resorts at Lake Berryessa shall be considered the property of the respective current concessionaires. Further, any permanent additions or modifications to these facilities shall remain the property of said concessionaires: *Provided*, That at the option of the Secretary of the Interior, the United States may require that the permanent facilities mentioned herein not be removed from the concession areas, and instead, pay fair value for the permanent facilities or, if a new concessionaire assumes operation of the concession, require that new concessionaire to pay fair value for the permanent facilities to the existing concessionaire. (94 Stat. 1506)

Sec. 6. [Amendments to Reclamation Project Authorization Act of 1972.]—The Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964) is amended—

(a) by inserting in section 101 of such Act, following "on this project", "as modified by the plans shown in the Definite Plan Report of the Water and Power Resources Service, dated November 1979";

(b) by inserting in section 102(b) of such Act, following "domestic wells in existence", "outside the project boundary"; and

(c) by striking in section 109 of such Act "$18,246,000 (April 1972 prices)" and inserting in lieu thereof "$57,139,000 (October 1979 prices)". (94 Stat. 1507)

EXPLANATORY NOTE

Reference in the Text. The Reclamation Project Authorization Act of October 20, 1972 (86 Stat. 964, 43 U.S.C. § 615aaa), referred to in and amended by the text, appears in Volume IV in chronological order.

Sec. 7. [Name of Curecanti Storage Unit changed to the Wayne N. Aspinall Storage Unit.]—The Curecanti Storage Unit of the Colorado

River Storage Project constructed under the authority of the Act of April 11, 1956 (70 Stat. 106) is hereby designated and hereafter shall be known as the Wayne N. Aspinall Storage Unit of the Colorado River Storage Project. Any law, regulation, record, map, or other document of the United States referring to the Curecanti Storage Unit shall be held to refer to the Wayne N. Aspinall Storage Unit. (94 Stat. 1507)

EXPLANATORY NOTE

Reference in the Text. The Act of April 11, 1956 (70 Stat. 105, 43 U.S.C. § 620 et seq.), referred to in the text, is the Colorado River Storage Project Act. The 1956 Act appears in Volume II at page 1248.

Sec. 8. [Amendments to Act of July 2, 1956]—Section 1(5) of the Act of July 2, 1956 (70 Stat. 483), is hereby amended to read as follows: "(5) Provide for payment of rates under any contract entered into pursuant to said subsection (e) in advance of delivery of water on an annual, semiannual, bimonthly, or monthly basis as specified in the contract.". (94 Stat 1507)

EXPLANATORY NOTE

Reference in the Text. The Act of July 2, 1956 (70 Stat. 483, 43 U.S.C. §§ 485h-1 to h-5), referred to in and amended by the text, relates to the administration of repayment and water service contracts entered into under the Reclamation Project Act of 1939 (Act of August 4, 1939, 53 Stat. 1187). The 1956 Act appears in Volume II at page 1275.

Sec. 9. [Integration of a solar powerplant into Federal hydroelectric system in Arizona, Nevada, California—Authorization of feasibility study.]—The Secretary of the Interior in coordination with the Secretary of Energy shall conduct a three-year study of the feasibility of integrating a solar powerplant in Arizona, Nevada, and California into the Federal hydroelectric system, including but not limited to consideration of the applicable solar technology, the operation of the Federal hydroelectric system and the integration of electric power generated by such a powerplant in the Federal system. The study shall specifically consider operations of Department of Energy Project 76-2-b, 10 MW Solar Thermal Power and related technology development. The Secretary shall complete the study by January 1, 1984 and submit a report to the President and the Congress. (94 Stat. 1507)

Sec. 10. [Amendment to the Colorado River Basin Project Act.]—That the proviso contained in section 201 of the Colorado River Basin Project Act (43 U.S.C. 1511) is amended by striking out "the Secretary" and inserting in lieu thereof "any Federal official". (94 Stat. 1507)

EXPLANATORY NOTE

Reference in the Text. Section 201 of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 886, 43 U.S.C. § 1501, 1511), referred to in and amended by the text, appears in chronological order.

Sec. 11. [Amendment to Reclamation Project Authorization Act of 1972—Authorization of appropriations for Brantley Project.]—Section

206 of Public Law 92-514 is amended to read as follows: "There is hereby authorized to be appropriated for construction of the Brantley project the sum of $172,728,000 (based on April 1979 prices), plus or minus such amounts, if any, as may be justified by reason of changes in the construction costs as indicated by engineering cost indexes applicable to the types of construction involved and, in addition thereto, sums as may be required for operation and maintenance of the project.". (94 Stat. 1507)

EXPLANATORY NOTE

Reference in the Text. Public Law 92-514 (86 Stat. 964, 43 U.S.C. § 615aaa), referred to in and amended by the text, is the Reclamation Project Authorization Act of October 20, 1972. The 1972 Act appears herein in chronological order.

Sec. 12. [Feasibility studies for salinity control proposals.]—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following salinity control proposals:

(1) Lower Gunnison Basin unit, located in Delta, Montrose, and Ouray Counties, Colorado.

(2) Glenwood-Dotsero Springs unit, located in Garfield and Eagle Counties, Colorado.

(3) Meeker Dome unit, located in Rio Blanco County, Colorado.

(4) McElmo Creek unit, located in Montezuma County, Colorado.

(5) Uinta Basin unit, located in Duchesne and Uintah Counties, Utah.

(6) Dirty Devil River unit, located in Sanpete, Sevier, Emery, and Wayne Counties, Utah.

(7) Price-San Rafael Rivers unit, located in Carbon, Emery, and Sanpete Counties, Utah.

(8) La Verkin Springs unit, located in Washington County, Utah.

(9) Lower Virgin River unit, located in Clark County, Nevada, and Mohave County, Arizona.

(10) Big Sandy River unit, located in Sweetwater County, Wyoming. (94 Stat. 1508)

Sec. 13. [Issuance of license by Federal Energy Regulatory Commission not precluded.]—Nothing in this Act shall be interpreted to preclude or delay issuance of a license by the Federal Energy Regulatory Commission. (94 Stat. 1508)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 5278, Public Law 96-375 in the 96th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 96-710. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-890. S. 3071 reported in Senate from Energy and Natural Resources; S. Rept. No. 96-938. H.R. 5278 passed House February 5, 1980. Passed Senate, amended, September 17, 1980. House agrees to Senate amendments September 24, 1980.

CONGRESSIONAL REPORTS ELIMINATION ACT

[Extracts from] An act to discontinue or amend certain requirements for agency reports to Congress. (Act of October 19, 1980, Pub. Law 96-470, 94 Stat. 2237)

[Sec. 1. Short title.]—This Act be [sic] cited as the "Congressional Reports Elimination Act of 1980". (94 Stat. 2237)

TITLE I—ELIMINATIONS

* * * * *

Sec. 108. [Amend Act of October 15, 1966—Amend Colorado River Storage Project Act—Amend Act of September 7, 1964.]—(a) Section 1(d) of the Act of October 15, 1966 (42 U.S.C. 1900(d); 80 Stat. 951) is repealed.

* * * * *

(c) Section 1 of the Colorado River Storage Project Act (43 U.S.C. 620; 82 Stat. 897), is amended by striking out "*Provided,* That construction of the Uintah [sic] of the Central Utah project shall not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted such report to the Congress, along with his certification that, in his judgment, the benefits of such unit or segment will exceed the costs and that such unit is physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof:".

(d) Section 4(c) of the Act of September 7, 1964, entitled "An Act to provide for the construction of the Lower Teton division of the Teton Basin Federal reclamation project, Idaho, and for other purposes" (43 U.S.C. 616qq(c); 79 Stat. 926), is repealed. (94 Stat. 2239)

EXPLANATORY NOTES

Reference in the Text. Section 1(d) of the Act of October 15, 1966, referred to in and repealed by subsection (a) of the text, prohibited execution of contracts for scientific and technical research involving more than $25,000 until 30 days after submission to Congress. The 1966 Act appears in Volume III at page 1907.

Reference in the Text. The proviso in section 1 of the Colorado River Storage Project Act of April 11, 1956, referred to in and deleted by subsection (c) of the text, had been added by section 501(a) of the Colorado River Basin Project Act (Act of September 30, 1968, Public Law 90-537, 82 Stat. 885, 896), which appears in Volume IV in chronological order.

Reference in the Text. Section 4(c) of the Act of September 7, 1964 (Public Law 88-583, 78 Stat. 925, 926), referred to in and repealed by subsection (d) of the text, prohibited construction on facilities of the Lower Teton division of the Teton Basin Project required solely to provide a full water supply to lands in the Rexburg Bench area until the Secretary had submitted a report and finding to Congress on the feasibility thereof. The 1964 Act appears in Volume III at page 1796.

Legislative History. H.R. 6686, Public Law 96-470 in the 96th Congress. Reported in House from Government Operations; H.R. Rept. No. 96-1268. Passed House September 15, 1980. Passed Senate, amended, September 25, 1980. House agrees to Senate amendments October 2, 1980.

SUISUN MARSH PRESERVATION AND RESTORATION ACT OF 1979

An act to provide for a cooperative agreement between the Secretary of the Interior and the State of California to improve and manage the Suisun Marsh in California. (Act of December 3, 1980, Public Law 96-495, 94 Stat. 2581)

[Sec. 1. Short title]—This Act may be cited as the "Suisun Marsh Preservation and Restoration Act of 1979". (94 Stat. 2581).

Sec. 2. [Purposes]—It is the purpose of this Act to—

(1) provide for partial mitigation of the adverse effects on the fish and wildlife resources of the Suisun Marsh in Solano County, California of the Central Valley project; and

(2) assist in the preservation and restoration of the fish and wildlife resources of the Marsh by authorizing the Secretary of the Interior to enter into a cooperative agreement with the State of California for the planning, design, construction, operation and maintenance of certain facilities for the Marsh which will not materially enhance the overall resources of the Marsh; and

(3) to provide for such facilities as part of the more extensive system of preservation and restoration facilities to be developed for the Solano County region by the State of California, the Secretary of the Interior, or both. (94 Stat. 2581)

Sec. 3. [Authorization of cooperative agreement for preservation of fish and wildlife in Suisun Marsh—Federal share of costs.]—The Secretary of the Interior, acting through the Commissioner of Reclamation, is authorized to enter into a cooperative agreement with the State of California (hereinafter in this Act referred to as the "State") to provide for mitigation of the adverse effects of the Central Valley project on the fish and wildlife resources of the Suisun Marsh, Solano County, California, and for the preservation and restoration of these resources. The cooperative agreement shall include the following provisions:

(1) The State shall design, construct, operate, and maintain certain channels, levees, and control structures in the Marsh in a manner which substantially conforms to the provisions of the development plan contained in the Report on the Suisun Marsh Interim Facilities (dated May 1978), prepared by the State of California with the assistance of the Water and Power Resources Service and the Fish and Wildlife Service. The State may enter into contracts with appropriate non-Federal public agencies within the State for the operation and maintenance of such facilities.

(2) The Secretary of the Interior shall pay to the State the Federal share of the costs of the activities described in paragraph (1), whether such costs are incurred before or after the date the cooperative agreement is entered into, upon a determination that such activities are in substantial conformity with the development plan referred to in such paragraph.

(3) A study shall be conducted by the State, the Secretary of the Interior, or both parties, for the purpose of identifying management techniques which could result in more efficient water use on the managed wetlands of the Marsh.

(4) Appropriate arrangements shall be made by the Secretary of the Interior and the State to provide for the monitoring of the salinity levels in the Marsh.

(5) The Federal share of the costs of the activities referred to in paragraphs (1) through (4) shall be 50 per centum: *Provided,* That the Federal share may be altered when the system of preservation and restoration facilities referred to in section 2, subsection (3) is authorized: *And provided further,* That any such altered division of costs shall be made retroactively applicable to the cost of the facilities herein provided for. (94 Stat. 2581)

Sec. 4. [Authority effective only as provided in advance in appropriation acts.]—The authority to enter into cooperative agreements under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts. (94 Stat. 2582)

Sec. 5. [Appropriation authorization for fiscal year 1981.]—There are authorized to be appropriated $2,500,000 for the fiscal year ending September 30, 1981 for the Federal share of the costs of the construction and the initial operation and maintenance of the facilities described in section 3(1) of this Act. Sums appropriated under this section shall remain available until expended. (94 Stat. 2582)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 4084, Public Law 96-495 in the 96th Congress. Reported in House jointly from Interior and Insular Affairs and Merchant Marine and Fisheries; H.R. Rept. No. 597. Passed House December 10, 1979. Reported in Senate jointly from Environment and Public Works and Energy and Natural Resources; S. Rept. No. 928. Passed Senate, amended, October 1, 1980. House concurred in Senate amendments, November 18, 1980.

MILNER DAM PROJECT, IDAHO

An act to exempt the existing facilities of the Milner Dam from section 14 of the Federal Power Act, and for other purposes. (Act of December 5, 1980, Private Law 96-70, 94 Stat. 3615)

[Sec. 1. Milner Dam exempt from section 14 of the Federal Power Act.]—The provisions of section 14 of the Federal Power Act (16 U.S.C. 807), other than the first sentence of section 14(b) (relating to relicensing), shall not apply to any project works of the Milner Dam project, located on the Snake River near Milner, Idaho, that are in existence on the date of the enactment of this Act, including the Milner Dam, reservoir, and associated irrigation facilities. The exemption provided by the preceding sentence shall not apply to any project works which are not in existence on the date of the enactment of this Act. (94 Stat. 3615)

Sec. 2. [Federal Power Act not otherwise affected.]—Except as provided in the first section of this Act, the provisions of this Act shall not be construed as repealing, amending, or otherwise affecting any of the provisions of the Federal Power Act. (94 Stat. 3615)

EXPLANATORY NOTES

Not Codified: This Act is not codified in the U.S. Code.

Background. Water is diverted from the Snake River at Milner Dam, Idaho, for use in the Minidoka Project, Idaho-Wyoming, but the Dam is not owned by the United States and is not a part of the authorized project.

Reference in the Text. Section 14 of the Act of June 10, 1920 (41 Stat. 1071, 16 U.S.C. § 807), as amended by section 2 of the Act of August 3, 1968 (82 Stat. 616) establishes the right of the U.S. Government to take over a project under the Federal Power Act. Section 14 of the 1920 Act appears in Volume I at page 276. The 1968 amendment appears in Supplement I under "June 10, 1920—Federal Power Act."

Legislative History. S. 1828, Private Law 96-70 in the 96th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-534. Reported in House from Interstate and Foreign Commerce; H.R. Report No. 96-1454. Passed Senate December 20, 1979. Passed House, with amendments, November 19, 1980. Senate concurs in House amendments November 20, 1980.

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

An act to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes. (Act of December 5, 1980, Public Law 96-501, 94 Stat. 2697)

SHORT TITLE AND TABLE OF CONTENTS

Section 1. This Act, together with the following table of contents, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act". (94 Stat. 2697; 16 U.S.C. § 839 note)

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.
Sec. 4. Regional planning and participation.
Sec. 5. Sale of power.
Sec. 6. Conservation and resource acquisition.
Sec. 7. Rates.
Sec. 8. Amendments to existing law.
Sec. 9. Administrative provisions.
Sec. 10. Savings provisions.
Sec. 11. Effective date.
Sec. 12. Severability.

PURPOSES

Sec. 2. The purposes of this Act, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System—

(A) conservation and efficiency in the use of electric power, and

(B) the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in—

(A) the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources,

(B) facilitating the orderly planning of the region's power system, and

(C) providing environmental quality;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act—

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries. (94 Stat. 2697; 16 U.S.C. § 839)

DEFINITIONS

Sec. 3. As used in this Act, the term—

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast—

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) "Consumer" means any end user of electric power.

(6) "Council" means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established pursuant to section 4.

(7) "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this Act.

(8) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) "Electric power" means electric peaking capacity, or electric energy, or both.

(10) "Federal base system resources" means—

(A) the Federal Columbia River Power System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on the effective date of this Act; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B) of this paragraph.

(11) "Indian tribe" means any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.

(12) "Major resource" means any resource that—

(A) has a planned capability greater than fifty average megawatts, and

(B) if acquired by the Administrator, is acquired for a period of more than five years.

Such term does not include any resource acquired pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act.

(13) "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer prior to September 1, 1979, and

(B) which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period.

(14) "Pacific Northwest", "region", or "regional" means—

(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

(15) "Plan" means the Regional Electric Power and Conservation plan (including any amendments thereto) adopted pursuant to this Act and such plan shall apply to actions of the Administrator as specified in this Act.

(16) "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(17) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator (A) from resources or (B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.

(18) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(19) "Resource" means—

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(20) "Secretary" means the Secretary of Energy. (94 Stat. 2698; 16 U.S.C. § 839a)

REGIONAL PLANNING AND PARTICIPATION

Sec. 4. (a) [Pacific Northwest Electric Power and Conservation Planning Council established—Membership—Application of certain Federal laws—Review in Federal courts.]—(1) The purposes of this section are to provide for the prompt establishment and effective operation of the Pacific Northwest Electric Power and Conservation Planning Council, to further the purposes of this Act by the Council promptly preparing and adopting (A) a regional conservation and electric power plan and (B) a program to protect, mitigate, and enhance fish and wildlife, and to otherwise expeditiously and effectively carry out the Council's responsibilities and functions under this Act.

(2) To achieve such purposes and facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and with the Bonneville Power Administration, the consent of Congress is given for an agreement described in this paragraph and not in conflict with this Act, pursuant to which—

(A) there shall be established a regional agency known as the "Pacific Northwest Electric Power and Conservation Planning Council" which (i) shall have its offices in the Pacific Northwest, (ii) shall carry out its functions and responsibilities in accordance with the provisions of this Act, (iii) shall continue in force and effect in accordance with the provisions of this Act, and (iv) except as otherwise provided in this Act, shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law; and

(B) two persons from each State may be appointed, subject to the applicable laws of each such State, to undertake the functions and duties of members of the Council.

The State may fill any vacancy occurring prior to the expiration of the term of any member. The appointment of six initial members, subject to applicable State law, by June 30, 1981, by at least three of such States shall constitute an agreement by the States establishing the Council and such agreement is hereby consented to by the Congress. Upon request of the Governors of two of the States, the Secretary shall extend the June 30, 1981, date for six additional months to provide more time for the States to make such appointments.

(3) Except as otherwise provided by State law, each member appointed to the Council shall serve for a term of three years, except that, with respect to members initially appointed, each Governor shall designate one member to serve a term of two years and one member to serve a term of three years. The members of the Council shall select from among themselves a chairman. The members and officers and employees of the Council shall not be

deemed to be officers or employees of the United States for any purpose. The Council shall appoint, fix compensation, and assign and delegate duties to such executive and additional personnel as the Council deems necessary to fulfill its functions under this Act, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this Act. The compensation of the members shall be fixed by State law.The compensation of the members and officers shall not exceed the rate prescribed for Federal officers and positions at step 1 of level GS-18 of the General Schedule.

(4) For the purpose of providing a uniform system of laws, in addition to this Act, applicable to the Council relating to the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, advisory committees, disclosure of information, judicial review of Council functions and actions under this Act, and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate, except that with respect to open meetings, the Federal laws applicable to open meetings in the case of the Federal Energy Regulatory Commission shall apply to the Council to the extent appropriate. In applying the Federal laws applicable to financial disclosure under the preceding sentence, such laws shall be applied to members of the Council without regard to the duration of their service on the Council or the amount of compensation received for such service. No contract, obligation, or other action of the Council shall be construed as an obligation of the United States or an obligation secured by the full faith and credit of the United States. For the purpose of judicial review of any action of the Council or challenging any provision of this Act relating to functions and responsibilities of the Council, notwithstanding any other provision of law, the courts of the United States shall have exclusive jurisdiction of any such review.

(b) [Alternative method for establishing the Council.]—(1) If the Council is not established and its members are not timely appointed in accordance with subsection (a) of this section, or if, at any time after such Council is established and its members are appointed in accordance with subsection (a)—

(A) any provision of this Act relating to the establishment of the Council or to any substantial function or responsibility of the Council (including any function or responsibility under subsection (d) or (h) of this section or under section 6(c) of this Act) is held to be unlawful by a final determination of any Federal court, or

(B) the plan or any program adopted by such Council under this section is held by a final determination of such a court to be ineffective by reason of subsection (a)(2)(B),

the Secretary shall establish the Council pursuant to this subsection as a Federal agency. The Secretary shall promptly publish a notice thereof in the Federal Register and notify the Governors of each of the States referred to in subsection (a) of this section.

(2) As soon as practicable, but not more than thirty days after the publication of the notice referred to in paragraph (1) of this subsection, and thereafter within forty-five days after a vacancy occurs, the Governors of the States of Washington, Oregon, Idaho, and Montana may each (under applicable State laws, if any) provide to the Secretary a list of nominations from such State for each of the State's positions to be selected for such Council. The Secretary may extend this time an additional thirty days. The list shall include at least two persons for each such position. The list shall include such information about such nominees as the Secretary may request. The Secretary shall appoint the Council members from each Governor's list of nominations for each State's positions, except that the Secretary may decline to appoint for any reason any of a Governor's nominees for a position and shall so notify the Governor. The Governor may thereafter make successive nominations within forty-five days of receipt of such notice until nominees acceptable to the Secretary are appointed for each position. In the event the Governor of any such State fails to make the required nominations for any State position on such Council within the time specified for such nominations, the Secretary shall select from such State and appoint the Council member or members for such position. The members of the Council shall select from among themselves one member of the Council as Chairman.

(3) The members of the Council established by this subsection who are not employed by the United States or a State shall receive compensation at a rate equal to the rate prescribed for offices and positions at level GS-18 of the General Schedule for each day such members are engaged in the actual performance of duties as members of such Council, except that no such member may be paid more in any calendar year than an officer or employee at step 1 of level GS-18 is paid during such year. Members of such Council shall be considered officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.) and shall also be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code. Such Council may appoint, and assign duties to, an executive director who shall serve at the pleasure of such Council and who shall be compensated at the rate established for GS-18 of the General Schedule. The executive director shall exercise the powers and duties delegated to such director by such Council, including the power to appoint and fix compensation of additional personnel in accordance with applicable Federal law to carry out the functions and responsibilities of such Council.

(4) When a Council is established under this subsection after a Council was established pursuant to subsection (a) of this section, the Secretary shall provide, to the greatest extent feasible, for the transfer to the Council established by this subsection of all funds, books, papers, documents, equipment, and other matters in order to facilitate the Council's capability to achieve the requirements of subsections (d) and (h) of this section. In order to carry out its functions and responsibilities under this Act expeditiously,

the Council shall take into consideration any actions of the Council under subsection (a) and may review, modify, or confirm such actions without further proceedings.

(5)(A) At any time beginning one year after the plan referred to in such subsection (d) and the program referred to in such subsection (h) of this section are both finally adopted in accordance with this Act, the Council established pursuant to this subsection shall be terminated by the Secretary 90 days after the Governors of three of the States referred to in this subsection jointly provide for any reason to the Secretary a written request for such termination. Except as provided in subparagraph (B), upon such termination all functions and responsibilities of the Council under this Act shall also terminate.

(B) Upon such termination of the Council, the functions and responsibilities of the Council set forth in subsection (h) of this section shall be transferred to, and continue to be funded and carried out, jointly, by the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service, in the same manner and to the same extent as required by such subsection and in cooperation with the Federal and the region's State fish and wildlife agencies and Indian tribes referred to in subsection (h) of this section and the Secretary shall provide for the transfer to them of all records, books, documents, funds, and personnel of such Council that relate to subsection (h) matters. In order to carry out such functions and responsibilities expeditiously, the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service shall take into consideration any actions of the Council under this subsection, and may review, modify, or confirm such actions without further proceedings. In the event the Council is terminated pursuant to this paragraph, whenever any action of the Administrator requires any approval or other action by the Council, the Administrator may take such action without such approval or action, except that the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits involving a major generating resource until the expenditure of funds for that purpose is specifically authorized by Act of Congress enacted after such termination.

(c) [Quorum—Voting—Meetings—Organization and procedures—Housekeeping arrangements—Assistance from other Federal agencies—Information to Congress—Obtaining information and studies—Administrator to pay expenses—Voluntary advisory committees.]—(1) The provisions of this subsection shall, except as specifically provided in this subsection, apply to the Council established pursuant to either subsection (a) or (b) of this section.

(2) A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this Act, all actions and decisions of the Council shall be by majority vote of the members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of—

(A) a majority of the members appointed to the Council, including the vote of at least one member from each State with members on the Council; or

(B) at least six members of the Council.

(3) The Council shall meet at the call of the Chairman or upon the request of any three members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reason for such disagreement or views.

(4) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions and responsibilities under this Act. The Council shall make available to the public a statement of its organization, practices, and procedures, and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.

(5) Upon request of the Council established pursuant to subsection (b) of this section, the head of any Federal agency is authorized to detail or assign to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this Act.

(6) At the Council's request, the Administrator of the General Services Administration shall furnish the Council established pursuant to subsection (b) of this section with such offices, equipment, supplies, and services in the same manner and to the same extent as such Administrator is authorized to furnish to any other Federal agency or instrumentality such offices, supplies, equipment, and services.

(7) Upon the request of the Congress or any committee thereof, the Council shall promptly provide to the Congress, or to such committee, any record, report, document, material, and other information which is in the possession of the Council.

(8) To obtain such information and advice as the Council determines to be necessary or appropriate to carry out its functions and responsibilities pursuant to this Act, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.

(9) The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

(10)(A) At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this Act, including the reimbursement of those States with members on the Council for services and personnel to assist in preparing a plan pursuant to subsection (d) and a program pursuant

to subsection (h) of this section, as the Council determines are necessary or appropriate for the performance of its functions and responsibilities. Such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d) of such Act. The records, reports, and other documents of the Council shall be available to the Comptroller General for review in connection with such audit or other review and examination by the Comptroller General pursuant to other provisions of law applicable to the Comptroller General. Funds provided by the Administrator for such payments shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

(B) Notwithstanding the limitation contained in the fourth sentence of subparagraph (A) of this paragraph, upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions and responsibilities under this Act the Administrator may raise such limit up to any amount not in excess of 0.10 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded.

(11) The Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

(12) The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities under this Act.

(13) The Council shall ensure that the membership for any advisory committee established or formed pursuant to this section shall, to the extent feasible, include representatives of, and seek the advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers.

(d) [Council shall adopt a regional conservation and electric power plan—Public hearings.]—(1) Within two years after the Council is established and the members are appointed pursuant to subsection (a) or (b) of this section, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the

Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, United States Code and such procedure as the Council shall adopt.

(2) Following adoption of the plan and any amendment thereto, all actions of the Administrator pursuant to section 6 of this Act shall be consistent with the plan and any amendment thereto, except as otherwise specifically provided in this Act.

(e) [Contents of plan—Priorities—Studies of conservation measures.]—(1) The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost-effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

(2) The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 of this Act to reduce or meet the Administrator's obligations with due consideration by the Council for (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

(3) To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

(A) an energy conservation program to be implemented under this Act, including, but not limited to, model conservation standards;

(B) recommendation for research and development;

(C) a methodology for determining quantifiable environmental costs and benefits under section 3(4);

(D) a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) of this subsection which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect, if any, of the requirements of subsection (h) on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and may include, to

the extent practicable, an estimate of the types of resources from which such power should be acquired;

(E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;

(F) the program adopted pursuant to subsection (h); and

(G) if the Council recommends surcharges pursuant to subsection (f) of this section, a methodology for calculating such surcharges.

(4) The Council, taking into consideration the requirement that it devote its principal efforts to carrying out its responsibilities under subsections (d) and (h) of this section, shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall consult with such customers and consumers in the conduct of such studies.

(f) [Model conservation standards—Surcharge for failure to implement conservation measures.]—(1) Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers, taking into account financial assistance made available to consumers under section 6(a) of this Act. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

(2) The Council by a majority vote of the members of the Council is authorized to recommend to the Administrator a surcharge and the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

(g) [Public information and comment—Contracts with and assistance to Federal agencies, State agencies and political subdivisions, and Indian

tribes.]—(1) To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall maintain comprehensive programs to—

(A) inform the Pacific Northwest public of major regional power issues,

(B) obtain public views concerning major regional power issues, and

(C) secure advice and consultation from the Administrator's customers and others.

(2) In carrying out the provisions of this section, the Council and the Administrator shall—

(A) consult with the Administrator's customers;

(B) include the comments of such customers in the record of the Council's proceedings; and

(C) recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

(3) In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (A) investigate possible measures to be included in the plan, (B) provide public involvement and information regarding a proposed plan or amendment thereto, and (C) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council, may be incorporated as part of the plan.

(h) [Council shall adopt a fish and wildlife program—Recommendations of Federal and State fish and wildlife agencies and Indian tribes—Expenditures by Administrator from the fund for fish and wildlife purposes—Operation and regulation of hydroelectric facilities to protect, mitigate and enhance fish and wildlife—Annual report to Congress.]—(1)(A) The Council shall promptly develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. Because of the unique history, problems, and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries, the program, to the

greatest extent possible, shall be designed to deal with that river and its tributaries as a system.

(B) This subsection shall be applicable solely to fish and wildlife, including related spawning grounds and habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify, or affect in any way the laws applicable to rivers or river systems, including electric power facilities related thereto, other than the Columbia River and its tributaries, or affect the rights and obligations of any agency, entity, or person under such laws.

(2) The Council shall request, in writing, promptly after the Council is established under either section 4(a) or 4(b) of this Act and prior to the development or review of the plan, or any major revision thereto, from the Federal, and the region's State, fish and wildlife agencies and from the region's appropriate Indian tribes, recommendations for—

(A) measures which can be expected to be implemented by the Administrator, using authorities under this Act and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries;

(B) establishing objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and

(C) fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the region's hydroelectric dams.

(3) Such agencies and tribes shall have 90 days to respond to such request, unless the Council extends the time for making such recommendations. The Federal, and the region's, water management agencies, and the region's electric power producing agencies, customers, and public may submit recommendations of the type referred to in paragraph (2) of this subsection. All recommendations shall be accompanied by detailed information and data in support of the recommendations.

(4)(A) The Council shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Administrator, to the Federal, and the region's, State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating, or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Notice shall also be given to the public. Copies of such recommendations and supporting documents shall be made available for review at the offices of the Council and shall be available for reproduction at reasonable cost.

(B) The Council shall provide for public participation and comment regarding the recommendations and supporting documents, including an op-

portunity for written and oral comments, within such reasonable time as the Council deems appropriate.

(5) The Council shall develop a program on the basis of such recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers referred to in subparagraph (A) of paragraph (4). The program shall consist of measures to protect, mitigate, and enhance fish and wildlife affected by the development, operation, and management of such facilities while assuring the Pacific Northwest an adequate, efficient, economical and reliable power supply. Enhancement measures are designed to achieve improved protection and mitigation.

(6) The Council shall include in the program measures which it determines, on the basis set forth in paragraph (5), will—

(A) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;

(B) be based on, and supported by, the best available scientific knowledge;

(C) utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost;

(D) be consistent with the legal rights of appropriate Indian tribes in the region; and

(E) in the case of anadromous fish—

(i) provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and

(ii) provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives.

(7) The Council shall determine whether each recommendation received is consistent with the purposes of this Act. In the event such recommendations are inconsistent with each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and Indian tribes as part of the program or any other recommendation, it shall explain in writing, as part of the program, the basis for its finding that the adoption of such recommendation would be—

(A) inconsistent with paragraph (5) of this subsection;

(B) inconsistent with paragraph (6) of this subsection; or

(C) less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.

(8) The Council shall consider, in developing and adopting a program pursuant to this subsection, the following principles:

(A) Enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and operation of

the hydroelectric facilities of the Columbia river and its tributaries as a system.

(B) Consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only.

(C) To the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the appropriate parties providing for the administration and funding of such additional measures.

(D) Monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the Administrator consistent with individual project impacts and system-wide objectives of this subsection.

(9) The Council shall adopt such program or amendments thereto within one year after the time provided for receipt of the recommendations. Such program shall also be included in the plan adopted by the Council under subsection (d).

(10)(A)The Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this Act and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this Act. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(B) The Administrator may make expenditures from such fund which shall be included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than 15 years and an estimated cost of at least $1,000,000 shall be funded in the same manner and in accordance with the same procedures as major transmission facilities under the Federal Columbia River Transmission System Act.

(C) The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.

(11)(A) The Administrator and other Federal agencies responsible for

managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall—

(i)exercise such responsibilities consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated;

(ii)exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.

(B) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes, and affected project operators in carrying out the provisions of this paragraph and shall, to the greatest extent practicable, coordinate their actions.

(12)(A) Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Interstate and Foreign commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this Act, including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan when adopted. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof.

(B) The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this Act, including this subsection.

(i)[Council may review Administrator's fish and wildlife and conservation and resource acquisition actions.]—The Council may from time to time review the actions of the Administrator pursuant to section 4 and 6 of this Act to determine whether such actions are consistent with the plan and programs, the extent to which the plan and programs is being implemented, and to assist the Council in preparing amendments to the plan and programs.

(j)[Council may request Administrator to take an action under section 6.]—(1) The Council may request the Administrator to take an action under section 6 to carry out the Administrator's responsibilities under the plan.

(2) To the greatest extent practicable within ninety days after the Council's request, the Administrator shall respond to the Council in writing specifying—

(A) the means by which the Administrator will undertake the action or any modification thereof requested by the Council, or

(B) the reasons why such action would not be consistent with the plan, or with the Administrator's legal obligations under this Act, or other provisions of law, which the Administrator shall specifically identify.

(3) If the Administrator determines not to undertake the requested action, the Council, within sixty days after notice of the Administrator's determination, may request the Administrator to hold an informal hearing and make a final decision.

(k)[Council shall review conservation measures and resources within six years to ascertain possible adverse results—Following review Administrator may waive section 3(4)(D).]—(1) Not later than October 1, 1987, or six years after the Council is established under this Act, whichever is later, the Council shall complete a thorough analysis of conservation measures and conservation resources implemented pursuant to this Act during the five-year period beginning on the date the Council is established under this Act to determine if such measures or resources:

(A) have resulted or are likely to result in costs to consumers in the region greater than the costs of additional generating resources or additional fuel which the Council determines would be necessary in the absence of such measures or resources;

(B) have not been or are likely not to be generally equitable to all consumers in the region; or

(C) have impaired or are likely to impair the ability of the Administrator to carry out his obligations under this Act and other laws, consistent with sound business practices.

(2) The Administrator may determine that section 3(4)(D) shall not apply to any proposed conservation measure or resource if the Administrator finds after receipt of such analysis from the Council that such measure or resource would have any result or effect described in subparagraph (A), (B) or (C) of paragraph (1). (94 Stat. 2700; 16 U.S.C. § 839b)

SALE OF POWER

Sec. 5. (a) [Preference in sale of power.]—All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

NOTE OF OPINION

1. Preference

The provision in section 5(d)(1)(A) of the Pacific Northwest Act that sales to direct service industrial customers (DSIs) will provide

reserves for firm power loads within the region does not exempt the sales of nonfirm energy to the DSIs from the preference provision of law as referenced in sections 5(a) and 10(c) of the Act. *Central Lincoln Peoples' Utility District v. Johnson,* 686 F. 2d 708, 673 F. 2d 1076 (9th Cir. 1982). [Editor's note: This decision was reversed by the Supreme Court on certiorari sub. nom. *Aluminum Company of America v. Central Lincoln Peoples' Utility District,* 467 U.S. 380 (1984).]

(b)[Sales to requesting public bodies, cooperatives, and investor owned utilities—Sales to Federal agencies—Restriction if resource acquisition cannot be assured on a planning basis.]—(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region to the extent that such firm power load exceeds—

(A) the capability of such entity's firm peaking and energy resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2)Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this Act, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

(6) Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall—

(A) provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

(B) not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

(C) contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of the effective date of this Act, to be used to serve its own firm loads.

The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under paragraph (1) of this subsection to be used to serve its firm load.

(c)[Purchase and exchange sales with Pacific Northwest utilities to serve their residential loads—Benefits shall be passed through directly to such loads—Termination—In lieu acquisition of lower cost power—Methodology for determining "average system cost."]—(1) Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

(2) The purchase and exchange sale referred to in paragraph (1) of this subsection with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's Regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

(3) The cost benefits, as specified in contracts with Administrator, of any purchase and exchange sale referred to in paragraph (1) of this subsection which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

(4) An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

(5) Subject to the provisions of sections 4 and 6, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

(6) Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

(7) The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include—

(A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;

(B) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and

(C) any costs of any generating facility which is terminated prior to initial commercial operation.

(d)[Sales to existing direct service industrial customers—Shall provide a portion of reserves for firm power loads—Limitations—Definitions—Special provisions for contract with any existing customer which has not previously received power.]—(1)(A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

(B) After the effective date of this Act, the Administrator shall offer in accordance with subsection (g) of this section to each existing direct service industrial customer an initial long term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power."

(2) The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines, after a plan has been adopted pursuant to section 4 of this Act, that such proposed sale is consistent with the plan and that —

(A) additional power system reserves are required for the region's firm loads,

(B) the proposed sale would provide a cost-effective method of supplying such reserves,

(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and

(D) the Administrator has or can acquire sufficient electric power to serve such loads, and

unless the Council has determined such sale is consistent with the plan. After such determination by the Administrator and by the Council, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) of this subsection as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

(4)(A) As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on the effective date of this Act.

(B) The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

(C)(i) Where a new contract is offered in accordance with subsection (g) to any existing direct service industrial customer which has not received electric power prior to the effective date of this Act from the Administrator pursuant to a contract with the Administrator existing on the date of the enactment of this Act, electric power delivered under such new contract shall be conditioned on the Administrator reasonably acquiring, in accordance with this Act and within such estimated period of time (as specified in the contract) as he deems reasonable, sufficient resources to meet, on a planning basis, the load requirement of such customer. Such contract shall also provide that the obligation of the Administrator to acquire such resources to meet such load requirement shall, except as provided in clause (ii) of this subparagraph, apply only to such customer and shall not be sold or exchanged by such customer to any other person.

(ii) Rights under a contract described in clause (i) of this subparagraph may be transferred by an existing direct service industrial customer referred to in clause (i) to a successor in interest in connection with a reorganization or other transfer of all major assets of such customer. Following such a transfer, such successor in interest (or any other subsequent successor in interest) may also transfer rights under such a contract only in connection with a reorganization or other transfer of all assets of such successor in interest.

(iii) The limitation of clause (i) of this subparagraph shall not apply to any customer referred to in clause (i) whenever the Administrator determines that such customer is receiving electric power pursuant to a contract referred to in such clause (ii).

NOTE OF OPINION

1. Preference

The provision in section 5(d)(1)(A) of the Pacific Northwest Act that sales to direct service industrial customers (DSIs) will provide reserves for firm power loads within the region does not exempt the sales of nonfirm

energy to the DSIs from the preference provision of law as referenced in sections 5(a) and 10(c) of the Act. *Central Lincoln Peoples' Utility District v. Johnson*, 686 F. 2d 708, 673 F. 2d 1076 (9th Cir. 1982). [Editor's note: This decision was reversed by the Supreme Court on certiorari sub. nom., *Aluminum Company of America v. Central Lincoln Peoples' Utility District*, 467 U.S. 380 (1984).]

(e)[Contractual entitlements during periods of insufficiency based on power sold by the customer to BPA under section 6—Distribution of excess entitlements by customer class.]—(1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

(A) public bodies and cooperatives;
(B) Federal agencies;
(C) direct service industrial; and
(D) investor owned utilities.

(2) Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 6 shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 6 shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

(3) The Administrator shall, consistent with the provisions of this Act, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) of this section are distributed equitable throughout the region.

(f)[Administrator authorized to sell surplus power]—The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsections (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).

(g)[Initial contracts to be offered within nine months—Customers have one year to accept—Effective dates—Resources deemed sufficient.]—(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to—

(A) existing public body and cooperative customers and investor-owned utility customers under subsection (b) of this section;

(B) Federal agency customers under subsection (b) of this section;

(C) electric utility customers under subsection (c) of this section; and

(D) direct service industrial customers under subsection (d)(1).

(2) Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

(3) An initial contract with a public body, cooperative or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) of this section shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

(4) An initial contract with an electric utility customer pursuant to subsection (c) of this section shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after the effective date of this Act.

(5) An initial contract with a direct service industrial customer pursuant to subsection (d)(1), shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after the effective date of this Act. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

(6) Initial contracts offered public body, cooperative and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) of this section each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

(7) The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1)(A) through (D). (94 Stat. 2712; 16 U.S.C. § 839c)

NOTE OF OPINION

1. Jurisdiction of Court of Appeals

Suits challenging the execution by the Administrator of the Bonneville Power Administration of long-term power contracts required by section 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act on the grounds that the failure to issue environmental impact statements violated the Nation Environmental Policy Act should be filed with the 9th Circuit Court of Appeals and not the District Court. *National Wildlife Federation v. Johnson*, 548 F. Supp. 708 (D. Ore. 1982) [Editor's note: This holding was affirmed in *Forelaws on Board v. Johnson*, 709 F. 2d. 1310 (9th Cir. 1983).]

CONSERVATION AND RESOURCE ACQUISITION

Sec. 6. (a)[Administrator shall acquire resources through conservation, implement conservation measures and acquire renewable resources installed by a residential or small commercial consumer to reduce load—Kinds of measures and resources—Administrator shall acquire addi-

tional resources to meet contractual obligations.]—(1) The Administrator shall acquire such resources through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan, or if no plan is in effect with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) and, in the case of major resources, in accordance with subsection (c) of this section. Such conservation measures and such resources may include, but are not limited to—

(A) loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

(B) technical and financial assistance to, and other cooperation with, the Administrator's customers and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of any cost-effective conservation objectives adopted by individual States or subdivisions thereof,

(C) aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 4(f), and

(D) conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

(2) In addition to acquiring electric power pursuant to section 5(c), or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act, the Administrator shall acquire, in accordance with this section, sufficient resources—

(A) to meet his contractual obligations that remain after taking into account planned savings from measures provided for in paragraph (1) of this subsection, and

(B) to assist in meeting the requirements of section 4(h) of this Act.

The Administrator shall acquire such resources without considering restrictions which may apply pursuant to section 5(b) of this Act.

(b) [Limitations and conditions on acquisition of resources.]—(1) Except as specifically provided in this section, acquisition of resources under this Act shall be consistent with the plan, as determined by the Administrator.

(2) The Administrator may acquire resources (other than major resources) under this Act which are not consistent with the plan, but which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act.

(3) If no plan is in effect, the Administrator may acquire resources under this Act which are determined by the Administrator to be consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act.

(4) The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this

section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions which will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner consistent with the considerations specified in section 4(e)(2) of this Act.

(5) Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to achieve conservation and to acquire renewable resources installed by a residential or small commercial consumer to reduce load, pursuant to subsection (a)(1) of this section.

(c)[Procedures for acquisition of a major resource, for implementation of a major conservation measure, or for payments or credits relating to a major resource.]—(1) For each proposal under subsection (a), (b), (f), (h), or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the

time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

(A) that the proposal is either consistent or inconsistent with the plan, or

(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969,

(B) publish notice of the decision in the Federal Register, and

(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the Federal Register, whichever is later.

(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

(d) [Acquisition of non-major experimental, demonstration, or pilot resources.]—The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 4(e)(1) and the considerations of section 4(e)(2) but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such

resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(e) [Conservation authorities to be used to maximum extent practicable—Use of customers and local entities.]—(1) In order to effectuate the priority given to conservation measures and renewable resources under this Act, the Administrator shall, to the maximum extent practicable, make use of his authorities under this Act to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f) of this section).

(2) To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

(f) [Funding or reimbursement of certain investigation and preconstruction activities under specified conditions.]—(1) For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of—

(A) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

(B) any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

In the case of any resource referred to in subparagraph (B) of this paragraph, such reimbursement is authorized only if—

(i) such resource is subsequently denied State siting approval or other necessary Federal or State permits, or approvals,

(ii) such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or is not acceptable because of environmental impacts, or

(iii) after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

(2) The Administrator may exercise the authority of this subsection only after he determines that the failure to do so would result in inequitable hardship to the consumers of such sponsors. The Administrator may provide reimbursement under this subsection only for expenses incurred after the date of the enactment of this Act.

(3) Any agreement under paragraph (1) of this subsection shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

(4) The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State siting approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 4(e)(1) and the consideration of section 4(e)(2).

(g) [Preparation of environmnetal impact statements jointly with State.]—At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h) [Billing credits and services for conservation activities and resources which reduce the obligation of the Administrator to acquire resources.]—(1) If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for—

(A) conservation activities independently undertaken or continued after the effective date of this Act by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this Act, or

(B) resources constructed, completed, or acquired after the effective date of this Act by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this Act. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act.

(2) The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

(3) The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting

the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

(4) For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, and entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

(5) Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

(6) Prior to granting any credit or providing services pursuant to this subsection, the Administrator shall—

(A) comply with the notice provisions of subsection (c) of this section, and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;

(B) include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 (j));

(C) require that resources in excess of customer's reasonable load growth shall have been offered to others for ownership, participation or other sponsorship pursuant to subsection (m) of this section, except in the case of conservation, multi-purpose projects uniquely suitable for development by the customer, or renewable resources; and

(D) require that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.

(i) [Contracts to include effective oversight provisions on timeliness, cost, safety, fish and wildlife, etc.]—Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will—

(1) insure timely construction, scheduling, completion, and operation of resources,

(2) insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices, and (B) the protection, mitigation, and enhancement of fish

and wildlife, including related spawning grounds and habitat affected by the development of such resources, and

(3) insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation. Such contracts shall contain provisions assuring that the Administration has the authority to approve all costs of, and proposals for, major modifications in construction, scheduling or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

(j) [All obligation of Administrator are secured solely by revenues and not by full faith and credit of the United States.]—(1) All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

(2) All contracts entered into by the Administrator for the acquisition of resources pursuant to this Act shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1) of this subsection. The Administrator shall monitor and enforce such requirement.

(k) [Benefits shall be distributed equitably throughout region.]—In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

(l) [Authority to investigate resources outside the region and interregional exchanges—Report to Congress by July 1, 1981—Acquisition of resources.]—(1) The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.

(2) The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges

may occur. The Council shall take into consideration in formulating a plan such investigations.

(3) After the Administrator submits a report to Congress pursuant to paragraph (5) of this subsection, the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2). Such acquisitions shall be in accordance with the provisions of this subsection.

(4) The Administrator shall conduct the investigation and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

(5) No later than July 1, 1981, the Administrator shall submit to the Congress a report of the results of the investigations undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.

(m) [Determination required that a reasonable share of each major resource has been offered to each Pacific Northwest utility.]—Except as to resources under construction on the effective date of this Act, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's Regional load. (94 Stat. 2717; 16 U.S.C. § 839d)

RATES

Sec. 7. (a) [Rates for the sale of Federal power and transmission of non-Federal power established by the Administrator—Rates become effective upon confirmation and approval of the FERC upon specified findings.]—(1) The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

(2) Rates established under this section shall become effective only, except in the case of interim rules as provided in subsection (i)(6), upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

(A) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs,

(B) are based upon the Administrator's total system costs, and

(C) insofar as transmission rates are concerned, equitable allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.

(b) [Development of rates for general requirements of public, cooperative and Federal customers and residential exchange—Ceiling on firm power rates for public, cooperative and Federal customers after July 1, 1985—Supplemental rate charges to recover amounts not charged to public, cooperative and Federal customers—Definition of "general requirements".]—(1) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources.

(2) After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that—

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

(i) served by the Administrator, and

(ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A) of this paragraph;

(C) no purchases or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, co-

operative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were—

(i) purchased from such customers by the Administrator pursuant to section 6, or

(ii) not committed to load pursuant to section 5(b),

and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from—

(i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and

(ii) reserve benefits as a result of the Administrator's actions under this Act

were not achieved.

(3) Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) of this subsection shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by—

(A) a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1) of this subsection, and

(B) an overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administration at rates established under other subsections of this section prior to July 1, 1985.

(4) The term "general requirements" as used in this section means the public body, cooperative or Federal agency customer's electric power purchased from the Administrator under section 5(b) of this Act, exclusive of any new large single load.

(c) [Development of rates for direct service industrial customers.]—(1) The rate or rates applicable to direct service industrial customers shall be established—

(A) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(c) of

this Act, based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

(B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

(2) The determination under paragraph (1)(B) of this subsection shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account—

(A) the comparative size and character of the loads served,

(B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

(C) direct and indirect overhead costs,

all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

(3) The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

(d) [Discounts for customers with low system densities—Special rate for any industrial customer using indigenous minerals and fully interruptible power.]—(1) In order to avoid adverse impacts on retail rates of the Administrator's customers with low system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

(2) In order to avoid adverse impacts of increased rates pursuant to this Act on any direct service industrial customer using raw minerals indigenous to the region as its primary resource, the Administrator, upon request of such customer showing such impacts and after considering the effect of such request on his other obligations under this Act, is authorized, if the Administrator determines that such impacts will be significant, to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region. Such rate shall be established in accordance with this section and shall include such terms and conditions as the Administrator deems appropriate.

(e) [No prohibition on uniform rates for peaking capacity or time-of-day, seasonal, or other rate forms.]—Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

(f) [Development of rates for all other sales in Pacific Northwest.]—Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c) of this Act and additional resources which, in the determination of the Administrator, are applicable to such sales.

(g) [Equitable allocation of miscellaneous costs and benefits.]—Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on the effective date of this Act, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this Act, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) [Inclusion of conservation surcharges and resulting revenues.]—Notwithstanding any other provision of this section (except the provisions of subsection (a) of this section), the Administrator shall adjust power rates to include any surcharges arising under section 4(f) of this Act, and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 4(f) of this Act.

(i) [Procedures for establishing rates—Notice in Federal Register—Hearings—Written comments—Revised rates—Approval of rates by FERC on interim basis—Transitional approval of rates by Secretary on interim basis.]—In establishing rates under this section, the Administrator shall use the following procedures:

(1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2) of this subsection.

(2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—

(A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

(B) the hearing officer, in his discretion, shall allow a reasonable opportunity for cross examination, which, as determined by the hearing officer, is not dilatory, in order to develop information and material relevant to any such proposed rate.

(3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments sub-

mitted by persons prior to, or before the close of, hearings shall be made a part of the administrative record.

(4) After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

(5) The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

(6) The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2) of this section. The Commission shall have the authority, in accordance with such procedures, if any, as the Commission shall promptly establish and make effective within one year after the enactment of this Act, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection. Pending the establishment of such procedures by the Commission, if such procedures are required, the Secretary is authorized to approve such interim rates during such one-year period in accordance with the applicable procedures followed by the Secretary prior to the effective date of this Act. Such interim rates, at the discretion of the Secretary, shall continue in effect until July 1, 1982.

(j) [Rate schedules and billings to identify the cost contribution of different resources.]—All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate—

(1) the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

(2) the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

(k) [Rates for sale of nonfirm power outside Pacific Northwest to be reviewed by FERC in accordance with its ratemaking procedures under Federal Power Act.]—Notwithstanding any other provision of this Act, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after the date of this Act by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Notwithstanding section 201(f) of the Federal Power Act, such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) of this

section. The parties to such proceedings under subsection (i) shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(l) [Rates for sale of power to entities outside of United States to be equitable in relation to rates for power purchased from outside United States—Notice of negotiation of such rates.]—In order to further the purposes of this Act and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than the rates established under this Act for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

(m) [Annual impact aid payments to local governments with respect to major transmission facilities—Payments to be made under uniform formula established by rule after hearings and approved by FERC.]—(1) Beginning the first fiscal year after the plan and program required by section 4 (d) and (h) of this Act are finally adopted, the Administrator may, subject to the provisions of this section, make annual impact aid payments to the appropriate local governments within the region with respect to major transmission facilities of the Administrator, as defined in section 3(c) of the Federal Columbia River Transmission Act—

(A) which are located within the jurisdictional boundaries of such governments,

(B) which are determined by the Administrator to have a substantial impact on such governments, and

(C) where the construction of such facilities, or any modification thereof, is completed after the effective date of this Act, and, in the case of a modification of an existing facility, such modification substantially increases the capacity of such existing transmission facility.

(2) Payments made under this subsection for any fiscal year shall be determined by the Administrator pursuant to a regionwide, uniform formula to be established by rule in accordance with the procedures set forth in subsection (i) of this section. Such rule shall become effective on its approval, after considering its effect on rates established pursuant to this section, by the Federal Energy Regulatory Commission. In developing such formula, the Administrator shall identify, and take into account, the local governmental services provided to the Administrator concerning such facilities and the associated costs to such governments as the result of such facilities.

(3) Payments made pursuant to this subsection shall be made solely from the fund established by section 11 of the Federal Columbia River Transmission System Act. The provisions of section 13 of such Act, and any appropriations provided to the Administrator under any law, shall not be available for such payments. The authorization of payments under this subsection shall not be construed as an obligation of the United States.

(4) No payment may be made under this subsection with respect to any land or interests in land owned by the United States within the region and administered by any Federal agency (other than the Administrator), without regard to how the United States obtained ownership thereof, including lands or interests therein acquired or withdrawn by a Federal agency for purposes of such agency and subsequently made available to the Administrator for such facilities. (94 Stat. 2723; 16 U.S.C. § 839e)

EXPLANATORY NOTES

Hanna Nickel Mining and Smelting Company. The report of the House Interior and Insular Affairs Committee states that the Committee is aware of only one direct-service industrial customer, the Hanna Nickel Mining and Smelting Company, Riddle, Oregon, which would meet the criteria of section 7(d)(2) for a special rate. H.R. Rept. No. 96-976, Part II, 96th Cong., 2d Sess. 52-53 (1980).

Reference in the Text. Section 201(f) of the Federal Power Act (49 Stat. 847; 16 U.S.C. § 824(f)), referred to in subsection 7(k), provides in relevant part that Part II of that Act does not apply to agencies or employees of the United States. The provision appears in Volume I at page 528.

AMENDMENTS TO EXISTING LAW

Sec. 8. (a) [Use of Bonneville fund to make short-term power purchases to meet fish and wildlife obligations.]—Section 11(b) of the Federal Columbia River Transmission System Act is amended by striking out "or" before "(iii)" in paragraph (6), by striking out the semicolon at the end of such paragraph (6) and inserting in lieu thereof ", or (iv) on a short term basis to meet the Administrator's obligations under section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act;".

(b) [Use of Bonneville fund to make payments required by this Act.]—Section 11(b) of the Federal Columbia River Transmission System Act is amended by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act.".

(c) [Conforming amendment.]—Subsection (b) of section 13 of such Act is amended by striking out "and 11(b)(11)" and inserting in lieu thereof ", 11(b)(11), and 11(b)(12)".

(d) [Increased revenue bonds of $1,250,000,000 authorized for conservation and renewable resource loans and grants through special revolving account—Revenue bond interest rate to be comparable to market rates on similar bonds issued by government corporations—Interest pen-

alty for failure to make projected repayment on appropriated debt.]—(1) The first sentence of subsection (a) of section 13 of such Act is amended by inserting after the word "system," the following: "to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from a generating facility having a planned capability greater than 50 average megawatts),".

(2) The fourth sentence of such subsection (a) is amended by inserting the following before the period at the end thereof: "issued by Government corporations".

(3) Such subsection (a) is further amended by inserting the following before the period at the end thereof: "prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional $1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds".

(4) Such subsection (a) is further amended by inserting the following after the fourth sentence thereof: "Beginning in fiscal year 1982, if the Administrator fails to repay by the end of any fiscal year all of the amounts projected immediately prior to such year to be repaid to the Treasury by the end of such year under the repayment criteria of the Secretary of Energy and if such failure is due to reasons other than (A) a decrease in power sale revenues due to fluctuating streamflows or (B) other reasons beyond the control of the Administrator, the Secretary of the Treasury may increase the interest rate applicable to the outstanding bonds issued by the Administrator during such fiscal year. Such increase shall be effective commencing with the fiscal year immediately following the fiscal year during which such failure occurred and shall not exceed 1 per centum for each such fiscal year during which such repayments are not in accord with such criteria. The Secretary of the Treasury shall take into account amounts that the Administrator has repaid in advance of any repayment criteria in determining whether to increase such rate. Before such rate is increased, the Secretary of the Treasury, in consultation with the Administrator and the Federal Energy Regulatory Commission, must be satisfied that the Administrator will have the ability to pay such increased rate, taking into account the Administrator's obligations. Such increase shall terminate with the fiscal year in which repayments (including repayments of the increased rate) are in accordance with the repayment criteria of the Secretary of Energy.".

(e) [Conforming amendment regarding definition of "Pacific Northwest."]—Clause (2) of section 1(b) of the Act of August 31, 1964 (78 Stat. 756) is amended to read as follows: "(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the

effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region.". (94 Stat. 2728)

EXPLANATORY NOTE

Editor's Note, Annotations. Annotations of opinions, if any, interpreting the amendments made in section 8 to earlier Acts are found under those Acts.

ADMINISTRATIVE PROVISIONS

Sec. 9. (a) [Administrator's contract authority.]—Subject to the provisions of this Act, the Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)). Other provisions of law applicable to such contracts on the effective date of this Act shall continue to be applicable.

(b) [Relationship between Secretary and Administrator preserved—Secretary Council and Administrator shall act to assure timely implementation of the Act.]—The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), section 302(a) (2) and (3) of the Department of Energy Organization Act, and this Act. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this Act in a sound and business-like manner. Nothing in this Act shall be construed by the Secretary, the Administrator, or any other official of the Department of Energy to modify, alter, or otherwise affect the requirements and directives expressed by the Congress in section 302(a) (2) and (3) of the Department of Energy Organization Act or the operations of such officials as they existed prior to enactment of this Act.

(c) [Regional preference provisions of Act of August 31, 1964 extended to resources acquired under this Act.]—Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this Act. The Administrator shall, in making any determination, under any contract executed pursuant to section 5, of the electric power requirements of any Pacific Northwest customer, which is a

non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

(d) [No restrictions on right of utilities to develop and sell power from their own resources if this does not increase Administrator's firm power obligations—Administrator to supply support services for such resources without discrimination.]—No restrictions contained in subsection (c) shall limit or interfere with the sale, exchange or other disposition of any power by any utility group thereof from any existing or new non-Federal resource if such sale, exchange or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. In addition to the directives contained in subsections (i)(1)(B) and (i)(3) and subject to:

(1) any contractual obligations of the Administrator,

(2) any other obligations under existing law, and

(3) the availability of capacity in the Federal transmission system,

the Administrator shall provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and shall not discriminate against any utility or group thereof on the basis of independent development of such resource in providing such services.

(e) [Suits to challenge actions of Administrator or Council to be filed with United States court of appeals within 90 days—Suits challenging other actions to be filed in appropriate court—List of actions deemed final actions—Record upon review—Date certain actions deemed to be taken.]—(1) For purposes of section 701 through 706 of title 5, United States Code, the following actions shall be final actions subject to judicial review—

(A) adoption of the plan or amendments thereto by the Council under section 4, adoption of the program by the Council, and any determination by the Council under section 4(h);

(B) sales, exchanges, and purchases of electric power under section 5;

(C) the Administrator's acquisition of resources under section 6;

(D) implementation of conservation measures under section 6;

(E) execution of contracts for assistance to sponsors under section 6(f);

(F) granting of credits under section 6(h);

(G) final rate determinations under section 7; and

(H) any rule prescribed by the Administrator under section (7)(m)(2) of this Act.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this Act. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, United States Code, except that final determinations regarding rates under section 7 shall be supported by substantial evidence in the rulemaking record required by section 7(i) considered as a whole. The scope of review of an action under section 6(c) shall be governed by section 706 of title 5, United States Code. Nothing in this section shall be construed to require a hearing pursuant to section 544, 556, or 557 of title 5 of the United States Code.

(3) Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

(4) For purposes of this subsection—

(A) major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 6(c)(4)(B);

(B) resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

(C) conservation measures shall be deemed to be implemented upon execution of the contract or grant therefore; and

(D) rate determinations pursuant to section 7 shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

(5) Suits to challenge the constitutionality of this Act, or any action thereunder, final actions and decisions taken pursuant to this Act by the Administrator or the Council, or the implementation of such final actions, whether brought pursuant to this Act, the Bonneville Project Act, the Act of August 31, 1964 (16 U.S.C. 837-837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the United States court of appeals for the region. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this Act to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or programs or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such court shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan and program, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this Act or any other law. Suits challenging any other actions under this Act shall be filed in the appropriate court.

NOTES OF OPINIONS

1. Jurisdiction of Court of Appeals

Suits challenging the execution by the Administrator of the Bonneville Power Administration of long-term power contracts required by section 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act on the grounds that the failure to issue environmental impact statements violated the National Environmental Policy Act should be filed with the 9th Circuit Court of Appeals and not the District Court. *National Wildlife Federation v. Johnson,* 548 F. Supp. 708

(D. Ore. 1982) [Editor's note: This holding was affirmed in *Forelaws on Board v. Johnson,* 709 F. 2d, 1310 (9th Cir. 1983).]

The Court of Appeals for the Ninth Circuit has jurisdiction under section 9(e) of the Pacific Northwest Electric Power Planning and Conservation Act to determine whether the denial of a motion to intervene in a rate hearing is a final action. *California Energy Resources Conservation and Development Commission v. Johnson,* 677 F. 2d 711 (9th Cir. 1982).

(f) [Conditions under which interest on municipal bonds issued to finance resources acquired by Administrator is tax-exempt.]—For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provided in section 103(a)(1) of the Internal Revenue Code of 1954 shall not be affected by the Administrator's acquisition of such resources if—

(1) the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this Act are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of such Code), and

(2) based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of such Code).

The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

(g) [FERC to convene joint state board when reviewing rates for sale of power by investor-owned utilities to Administrator.]—When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under section 5(c) or 6, the Federal Energy Regulatory Commission shall, in accordance with section 209 of the Federal Power Act (16 U.S.C. 824h)—

(1) convene a joint State board, and

(2) invest such board with such duties and authority as will assist the Commission in its review of such rates.

(h) [Conditions under which entities formed to construct resources for sale to Administrator are exempt from the Public Utility Holding Company Act.]—(1) No "company" (as defined in section 2(a)(2) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(2)), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as

defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(3)), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code, if at least 90 per centum of the electricity generated by such company is sold to the Administrator under section 6, and if—

(A) the organization of such company is consistent with the policies of section 1 (b) and (c) of the Public Utility Holding Company Act of 1935, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

(B) participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 6(m).

(2) The Administrator shall include in any contract for the acquisition of a major resource from such "company" provision limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

(3) In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policies of section 1 (b) and (c) of the Public Utility Holding Company Act of 1935 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

(4) Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the "company" no longer operates in a manner consistent with the policies of section 1 (b) and (c) of the Public Utility Holding Company Act of 1935 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

(i) [Assistance by Administrator to customers in the acquisition and disposition of power—Administrator to furnish support services where no conflict with other obligations.]—(1) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

(A) acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 5(b), or (ii) direct service industrial customers to

replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

(B) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable laws.

(2) In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

(3) The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year.

(j) [Council to study and recommend retail rate designs to encourage conservation and use of renewable resources—Administrator upon request to assist customers in analyzing and developing such retail rate designs and in utilizing conservation and renewable resources.]—(1) the Council, as soon as practicable after the enactment of this Act, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

(2) Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 6(h) that might be realized by such customers as a result of adopting and implementing such retail rate

structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

(k) [Executive position established in the Bonneville Power Administration for conservation and renewable resources.]—There is hereby established within the administration an executive position for conservation and renewable resources. Such executive shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions. (94 Stat. 2729; 16 U.S.C. § 839f)

SAVINGS PROVISIONS

Sec. 10. (a) [Jurisdiction of States or political subdivisions over rates, resources or siting.]—Nothing in this Act shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to—

(1) determine retail electric rates, except as provided by section 5(c)(3);

(2) develop and implement plans and programs for the conservation, development, and use of resources; or

(3) make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) [Existing contracts.]—Nothing in this Act shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of the effective date of this Act.

(c) [Preference laws.]—Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

NOTE OF OPINION

1. Preference

The provision in section 5(d) (1) (A) of the Pacific Northwest Act that sales to direct service industrial customers (DSIs) will provide reserves for firm power loads within the region does not exempt the sales of nonfirm energy to the DSIs from the preference provision of law as referenced in sections 5(a) and 10(c) of the Act. *Central Lincoln Peoples' Utility District v. Johnson,* 686 F. 2d 708, 673 F. 2d 1076 (9th Circ. 1982). [Editor's note: This decision was reversed by the Supreme Court on certiorari sub. nom. *Aluminum Company of America v. Central Lincoln Peoples' Utility District,* 467 U.S. 380 (1984).]

(d) [Finding of unconstitutionality not to affect prior contracts.]—If any provision of this Act is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reim-

burse investigation and preconstruction expenses pursuant to section 5, and section 6 (a), (f) or (h) of this Act shall not be affected by such finding.

(e) [Indian treaties and rights.]—Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(f) [Reservations of power for use in Montana.]—The reservation under law of electric power primarily for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State is hereby affirmed. Such reservation shall also apply to 50 per centum of any electric power produced at Libby Reregulating Dam if built. Electric power so reserved shall be sold at the rate or rates set pursuant to section 7.

EXPLANATORY NOTE

References in the Text. The authorizing act for Hungry Horse Dam (Act of June 5, 1944, 58 Stat. 270, 43 U.S.C. § 593a), referred to in the text, appears in Volume II at page 786. Libby Dam, also referred to in the text, was authorized by the Flood Control Act of 1950 (Act of May 17, 1950, 64 Stat. 163), Extracts from the 1950 Act, not including the Libby Dam provision, appear in Volume II at page 1002. The Hungry Horse authorization has been recognized by the Bonneville Power Administration as reserving a portion of the project power for use in the State of Montana, but no similar reservation has been recognized in the Libby Dam authorization.

(g) [Construction work in progress.]—Nothing in this Act shall be construed to affect or modify the right of any State to prohibit utilities regulated by the appropriate State regulatory body from recovering, through their retail rates, costs during any period of resource construction.

(h) [Water rights.]—Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act of any plan or program adopted pursuant to the Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

(i) [Existing licenses, permits or certificates.]—Nothing in this Act shall be construed to affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law. (94 Stat. 2734; 16 U.S.C. § 839g)

EFFECTIVE DATE

Sec. 11. This Act shall be effective on the date of enactment, or October 1, 1980, whichever is later. For purposes of this Act, the term "date of the enactment of this Act" means such date of enactment or October 1, 1980, whichever is later. (94 Stat. 2735; 16 U.S.C. § 839 note)

SEVERABILITY

Sec. 12. If any provision of section 4(a) through (c) of this Act or any other provision of this Act or the application thereof to any person, State, Indian tribe, entity, or circumstance is held invalid, neither the remainder of section 4 or any other provisions of this Act, nor the application of such provisions to other persons, States, Indian tribes, entities, or circumstances, shall be affected thereby. (94 Stat. 2736; 16 U.S.C. § 839h)

EXPLANATORY NOTES

Legislative History. S. 885, Public Law 96-501 in the 96th Congress. Reported in Senate from Energy and Natural Resources July 3, 1979; S. Rept. No. 96-272. Passed Senate August 3, 1979. Reported in House from Interstate and Foreign Commerce May 15, 1980; H.R. Rept. No. 96-976, Part I. Reported in House from Interior and Insular Affairs September 16, 1980; H.R. Rept. No. 96-976, Part II. A reconciliation of the differences between the bills reported by the two House Committees was worked out and introduced on September 18, 1980 as H.R. 8157. The rule, H. Res. 791, providing for consideration of H.R. 8157 as an amendment in the nature of a substitute, was adopted on September 24, 1980. S. 885, as amended, passed the House on November 17, 1980. On November 19, 1980 the Senate concurred in the House amendment.

RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

[Extract from] An act to designate certain National Forest System lands in the State of New Mexico for inclusion in the National Wilderness Preservation System, and for other purposes. (Act of December 19, 1980, Public Law 96-550, 94 Stat. 3221)

* * * * *

TITLE IV—FOR THE RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

Sec. 401. [Secretary authorized to amend contract to defer repayment obligation and to transfer title to project facilities to District—Transfer not to include interests in land or water held for management of Maxwell NWR—District to continue to operate project—Further Federal expenditures limited to contract administration and fish and wildlife—Repayment obligation to continue—Flexible repayment plan according to ability to pay.]—That, notwithstanding any other provision of law, the Secretary of the Interior is authorized, subject to the written consent of the Vermejo Conservancy District, to amend contract numbered 178r–458, dated August 7, 1952, as amended, between the Vermejo Conservancy District, located in the State of New Mexico, and the United States for the construction, operation, and maintenance of the Vermejo reclamation project, to defer payments on the remaining repayment obligation of the Vermejo Conservancy District under such contract, until such time or times as the Secretary determines additional repayment to be reasonably feasible, to relieve the district of such other penalties, assessments, or costs, including interest, which have accrued or may become due under the existing contract prior to enactment of this Act, and to transfer all right, title, and interest in or to the project facilities serving the Vermejo Conservancy District: *Provided*, That the Vermejo Conservancy District shall, to the extent practicable, continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries, including the Maxwell National Wildlife Refuge, and in accordance with the authorized project purposes: *Provided further*, That with the exception of assistance, if needed, under the Disaster Relief Act of 1974, as amended, the Federal Government shall incur no further expense on behalf of the Vermejo project or the Vermejo Conservancy District for the operation and maintenance or rehabilitation of existing facilities or for the development of any new facilities related to the delivery or impoundment of water, and further Federal expenditures related to the Vermejo Federal reclamation project shall be limited to administration of such amended contract for the purpose of determining and obtaining such reasonable repayment as may be feasible, and to necessary expenses for fish and wildlife purposes. Transfer of project facilities to the district shall be without any additional consideration in

excess of the existing repayment obligation of the district, and shall include any related lands or interest in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Secretary for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements. Any amended contract which provides for deferral of the district's repayment obligation shall provide that the obligation shall continue in effect until repaid or for the useful life of the existing facilities, and the Secretary shall provide for a flexible plan of repayment of the remaining obligation of the district according to the district's ability to repay as determined by the Secretary. Determinations of ability to repay shall include water deliveries achieved in a given year, as well as such other factors as the Secretary considers to be pertinent. (94 Stat. 3226).

* * * * *

EXPLANATORY NOTES

Not Codified. The portion of this Act set forth in the text is not codified in the U.S. Code.

Reference in the Text. The Disaster Relief Act of 1974, referred to in the text, is the Act of May 22, 1974 (Public Law 93–288, 88 Stat. 143, 42 U.S.C. §§ 5121 et seq.). Extracts from the 1974 Act appear in Volume IV in chronological order.

Legislative History. H.R. 8298 in the 96th Congress. H.R. 8298 passed by House November 21, 1980. H.R. 8298 passed by Senate December 1, 1980. Companion bill S. 539. Reported in Senate from Energy and Natural Resources December 12, 1979; S. Rept. No. 96-483. Passed Senate December 20, 1979.

TAHOE REGIONAL PLANNING COMPACT

An act to grant the consent of the Congress to the Tahoe Regional Planning Compact, and to authorize the Secretary of Agriculture and others to cooperate with the planning agency thereby created. (Act of December 19, 1980, Public Law 96-551, 94 Stat, 3233)

[Sec. 1. Consent of Congress to compact.]—[I]n order to encourage the wise use and conservation of the waters of Lake Tahoe and of the resources of the area around said lake, the consent of the Congress is hereby given to the Tahoe Regional Planning Compact heretofore adopted by the States of California and Nevada, which compact reads as follows:

TAHOE REGIONAL PLANNING COMPACT

ARTICLE I.—FINDINGS AND DECLARATIONS OF POLICY

(a) It is found and declared that:

(1) The waters of Lake Tahoe and other resources of the region are threatened with deterioration or degeneration, which endangers the natural beauty and economic productivity of the region.

(2) The public and private interests and investments in the region are substantial.

(3) The region exhibits unique environmental and ecological values which are irreplaceable.

(4) By virtue of the special conditions and circumstances of the region's natural ecology, developmental pattern, population distribution and human needs, the region is experiencing problems of resource use and deficiencies of environmental control.

(5) Increasing urbanization is threatening the ecological values of the region and threatening the public opportunities for use of the public lands.

(6) Maintenance of the social and economic health of the region depends on maintaining the significant scenic, recreational, educational, scientific, natural and public health values provided by the Lake Tahoe Basin.

(7) There is a public interest in protecting, preserving and enhancing these values for the residents of the region and for visitors to the region.

(8) Responsibilities for providing recreational and scientific opportunities, preserving scenic and natural areas, and safeguarding the public who live, work and play in or visit the region are divided among local governments, regional agencies, the States of California and Nevada, and the Federal Government.

(9) In recognition of the public investment and multistate and national significance of the recreational values, the Federal Government has an interest in the acquisition of recreational property and the management

of resources in the region to preserve environmental and recreational values, and the Federal Government should assist the States in fulfilling their responsibilities.

(10) In order to preserve the scenic beauty and outdoor recreational opportunities of the region, there is a need to insure an equilibrium between the region's natural endowment and its manmade environment.

(b) In order to enhance the efficiency and governmental effectiveness of the region, it is imperative that there be established a Tahoe Regional Planning Agency with the powers conferred by this compact including the power to establish environmental threshold carrying capacities and to adopt and enforce a regional plan and implementing ordinances which will achieve and maintain such capacities while providing opportunities for orderly growth and development consistent with such capacities.

(c) The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provisions of this compact. (94 Stat. 3233)

ARTICLE II.—DEFINITIONS

As used in this compact:

(a) "Region," includes Lake Tahoe, the adjacent parts of Douglas and Washoe Counties and Carson City, which for the purposes of this compact shall be deemed a county, lying within the Tahoe Basin in the State of Nevada, and the adjacent parts of the counties of Placer and El Dorado lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the county of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of section 1, thence west to the northwest corner of section 3, thence south to the intersection of the basin crestline and the west boundary of section 10; all sections referring to township 15 north, range 16 east, M.D.B. & M. The region defined and described herein shall be as precisely delineated on official maps of the agency.

(b) "Agency" means the Tahoe Regional Planning Agency.

(c) "Governing body" means the governing board of the Tahoe Regional Planning Agency.

(d) "Regional plan" means the long-term general plan for the development of the region.

(e) "Planning commission" means the advisory planning commission appointed pursuant to subdivision (h) of article III.

(f) "Gaming" means to deal, operate, carry on, conduct, maintain or expose for play any banking or percentage game played with cards, dice or any mechanical device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fantan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, stud poker, draw poker or slot machine, but does not include social games played solely for drinks, or cigars or cigarettes served individually, games played in private homes

or residences for prizes or games operated by charitable or educational organizations, to the extent excluded by applicable State law.

(g) "Restricted gaming license" means a license to operate not more than 15 slot machines on which a quarterly fee is charged pursuant to NRS 463.373 and no other games.

(h) "Project" means an activity undertaken by any person, including any public agency, if the activity may substantially affect the land, water, air, space or any other natural resources of the region.

(i) "Environmental threshold carrying capacity" means an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region. such standards shall include but not be limited to standards for air quality, water quality, soil conservation, vegetation preservation and noise.

(j) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

(k) "Areas open to public use" means all of the areas within a structure housing gaming under a nonrestricted license except areas devoted to the private use of guests.

(l) "Areas devoted to private use of guests" means hotel rooms and hallways to serve hotel room areas, and any parking areas. A hallway serves hotel room areas if more than 50 percent of the areas on each side of the hallway are hotel rooms.

(m) "Nonrestricted license" means a gaming license which is not a restricted gaming license. (94 Stat. 3234)

ARTICLE III.—ORGANIZATION

(a) There is created the Tahoe Regional Planning Agency as a separate legal entity.

The governing body of the agency shall be constituted as follows:

(1)California delegation:

(A) One member appointed by each of the county boards of supervisors of the counties of El Dorado and Placer and one member appointed by the city council of the city of South Lake Tahoe. Any such member may be a member of the county board of supervisors or city council, respectively, and shall reside in the territorial jurisdiction of the governmental body making the appointment.

(B) Two members appointed by the Governor of California, one member appointed by the speaker of the assembly of California and one member appointed by the senate rules committee of the State of California. The members appointed pursuant to this subparagraph shall not be residents of the region and shall represent the public at large within the State of California.

(2)Nevada delegation:

(A) One member appointed by each of the boards of county commissioners of Douglas and Washoe Counties and one member ap-

pointed by the board of supervisors of Carson City. Any such member may be a member of the board of county commissioners or board of supervisors, respectively, and shall reside in the territorial jurisdiction of the governmental body making the appointment.

(B) One member appointed by the Governor of Nevada, the secretary of State of Nevada or his designee, and the director of the State department of conservation and natural resources of Nevada or his designee. Except for the secretary of State and the director of the State department of conservation and natural resources, the members or designees appointed pursuant to this subparagraph shall not be residents of the region. All members appointed pursuant to this subparagraph shall represent the public at large within the State of Nevada.

(C) One member appointed for a 1-year term by the six other members of the Nevada delegation. If at least four members of the Nevada delegation are unable to agree upon the selection of a seventh member within 60 days after the effective date of the amendments to this compact or the occurrence of a vacancy on the governing body for that State the Governor of the State of Nevada shall make such an appointment. The member appointed pursuant to this subparagraph may, but is not required to, be a resident of the region within the State of Nevada.

(3) If any appointing authority under paragraph (1)(A), (1)(B), (2)(A) or (2)(B) fails to make such an appointment within 60 days after the effective date of the amendments to this compact or the occurrence of a vacancy on the governing body, the Governor of the State in which the appointing authority is located shall make the appointment. The term of any member so appointed shall be 1 year.

(4)The position of any member of the governing body shall be deemed vacant if such a member is absent from three consecutive meetings of the governing body in any calendar year.

(5) Each member and employee of the agency shall disclose his economic interests in the region within 10 days after taking his seat on the governing board or being employed by the agency and shall thereafter disclose any further economic interest which he acquires, as soon as feasible after he acquires it. As used in this paragraph, "economic interests" means:

(A) Any business entity operating in the region in which the member or employee has a direct or indirect investment worth more than $1,000.

(B) Any real property located in the region in which the member or employee has a direct or indirect interest worth more than $1,000.

(C) Any source of income attributable to activities in the region, other than loans by or deposits with a commercial lending institution in the regular course of business, aggregating $250 or more in value received by or promised to the member within the preceding 12 months; or

(D) Any business entity operating in the region in which the member or employee is a director, officer, partner, trustee, employee or holds any position of management.

No member or employee of the agency shall make, or attempt to influence, an agency decision in which he knows or has reason to know he has an economic interest. Members and employees of the agency must disqualify themselves from making or participating in the making of the agency [sic] when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the economic interests of the member or employee.

(b) The members of the agency shall serve without compensation, but the expenses of each member shall be met by the body which he represents in accordance with the law of that body. All other expenses incurred by the governing body in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided, shall be paid by the agency out of its own funds.

(c) Except for the secretary of State and director of the State department of conservation and natural resources of Nevada and the member appointed pursuant to subdivision (a)(2)(C), the members of the governing body serve at the pleasure of the appointing authority in each case, but each appointment shall be reviewed no less often than every 4 years. Members may be reappointed.

(d) The governing body of the agency shall meet at least monthly. All meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held. The governing body shall fix a date for its regular monthly meeting in such terms as "the first Monday of each month," and shall not change such date more often than once in any calendar year. Notice of the date so fixed shall be given by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region. Notice of any special meeting, except an emergency meeting, shall be given by so publishing the date and place and posting an agenda at least 5 days prior to the meeting.

(e) The position of a member of the governing body shall be considered vacated upon his loss of any of the qualifications required for his appointment and in such event the appointing authority shall appoint a successor.

(f) The governing body shall elect from its own members a chairman and vice chairman, whose terms of office shall be 2 years, and who may be reelected. If a vacancy occurs in either office, the governing body may fill such vacancy for the unexpired term.

(g) Four of the members of the governing body from each State constitute a quorum for the transaction of the business of the agency. The voting procedures shall be as follows:

(1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each state agreeing with the vote of at least four members of the other State shall be required to take

action. If there is no vote of at least four of the members from one State agreeing with the vote of at least four of the members of the other State on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.

(2) For approving a project, the affirmative vote of at least five members from the State in which the project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the State in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion for approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

(3) For routine business and for directing the agency's staff on litigation and enforcement actions, at least eight members of the governing body must agree to take action. If at least eight votes in favor of such action are not cast, an action of rejection shall be deemed to have been taken. Whenever under the provisions of this compact or any ordinance, rule, regulation or policy adopted pursuant thereto, the agency is required to review or approve any project, public or private, the agency shall take final action by vote, whether to approve, to require modification or to reject such project, within 180 days after the application for such project is accepted as complete by the agency in compliance with the agency's rules and regulations governing such delivery unless the applicant has agreed to an extension of this time limit. If a final action by vote does not take place within 180 days, the applicant may bring an action in a court of competent jurisdiction to compel a vote unless he has agreed to an extension. This provision does not limit the right of any person to obtain judicial review of agency action under subdivision (h) of article VI. The vote of each member of the governing body shall be individually recorded. The governing body shall adopt its own rules, regulations and procedures.

(h) An advisory planning commission shall be appointed by the agency. The commission shall include: The chief planning officers of Placer County, El Dorado County, and the city of South Lake Tahoe in California and of Douglas County, Washoe County and Carson City in Nevada, the executive officer of the Lahontan Regional Water Quality Control Board of the State of California, the executive officer of the Air Resources Board of the State of California, the director of the State department of conservation and natural resources of the State of Nevada, the administrator of the division of environmental protection in the State department of conservation and natural resources of the State of Nevada, the administrator of the Lake Tahoe Management Unit of the United States Forest Service, and at least four lay members with an equal number from each State, at least half of whom shall be residents of the region. Any official member may designate an alternate.

The term of office of each lay member of the advisory planning commission shall be 2 years. Members may be reappointed.

The position of each member of the advisory planning commission shall be considered vacated upon loss of any of the qualifications required for appointments, and in such an event the appointing authority shall appoint a successor.

The advisory planning commission shall elect from its own members a chairman and a vice chairman, whose terms of office shall be 2 years and who may be reelected. If a vacancy occurs in either office, the advisory planning commission shall fill such vacancy for the unexpired term.

A majority of the members of the advisory planning commission constitutes a quorum for the transaction of the business of the commission. A majority vote of the quorum present shall be required to take action with respect to any matter.

(i) The agency shall establish and maintain an office within the region, and for this purpose the agency may rent or own property and equipment. Every plan, ordinance and other record of the agency which is of such nature as to constitute a public record under the law of either the State of California or the State of Nevada shall be open to inspection and copying during regular office hours.

(j) Each authority charged under this compact or by the law of either State with the duty of appointing a member of the governing body of the agency shall by certified copy of its resolution or other action notify the Secretary of State of its own State of the action taken. (94 Stat. 3235)

ARTICLE IV—PERSONNEL

(a) The governing body shall determine the qualification of, and it shall appoint and fix the salary of, the executive officer of the agency, and shall employ such other staff and legal counsel as may be necessary to execute the powers and functions provided for under this compact or in accordance with any intergovernmental contracts or agreements the agency may be responsible for administering.

(b) Agency personnel standards and regulations shall conform insofar as possible to the regulations and procedures of the civil service of the State of California or the State of Nevada, as may be determined by the governing body of the agency; and shall be regional and bistate in application and effect; provided that the governing body may, for administrative convenience and at its discretion, assign the administration of designated personnel arrangements to an agency of either State, and provided that administratively convenient adjustments be made in the standards and regulations governing personnel assigned under intergovernmental agreements.

(c) The agency may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the agency terms and conditions of employment similar to those enjoyed by employees of California and Nevada generally. (94 Stat. 3239)

ARTICLE V.—PLANNING

(1) [sic] In preparing each of the plans required by this article and each amendment thereto, if any, subsequent to its adoption, the planning commission after due notice shall hold at least one public hearing which may be continued from time to time, and shall review the testimony and any written recommendations presented at such hearing before recommending the plan or amendment. The notice required by this subdivision shall be given at least 20 days prior to the public hearing by publication at least once in a newspaper or combination of newspapers whose circulation is general throughout the region and in each county a portion of whose territory lies within the region.

The planning commission shall then recommend such plan or amendment to the governing body for adoption by ordinance. The governing body may adopt, modify or reject the proposed plan or amendment, or may initiate and adopt a plan or amendment without referring it to the planning commission. If the governing body initiates or substantially modifies a plan or amendment, it shall hold at least one public hearing thereon after due notice as required in this subdivision.

If a request is made for the amendment of the regional plan by:

(1) A political subdivision a part of whose territory would be affected by such amendment; or

(2) The owner or lessee of real property which would be affected by such amendment,

the governing body shall complete its action on such amendment within 180 days after such request is accepted as complete according to standards which must be prescribed by ordinance of the agency.

(b) The agency shall develop, in cooperation with the States of California and Nevada, environmental threshold carrying capacities for the region. The agency should request the President's Council on Environmental Quality, the U.S. Forest Service and other appropriate agencies to assist in developing such environmental threshold carrying capacities. Within 18 months after the effective date of the amendments to this compact, the agency shall adopt environmental threshold carrying capacities for the region.

(c) Within 1 year after the adoption of the environmental threshold carrying capacities for the region, the agency shall amend the regional plan so that, at a minimum, the plan and all of its elements, as implemented through agency ordinances, rules and regulations, achieves and maintains the adopted environmental threshold carrying capacities. Each element of the plan shall contain implementation provisions and time schedules for such implementation by ordinance. The planning commission and governing body shall continuously review and maintain the regional plan. The regional plan shall consist of a diagram, or diagrams, and text, or texts setting forth the projects and proposals for implementation of the regional plan, a description of the needs and goals of the region and a statement of the policies, standards and elements of the regional plan.

The regional plan shall be a single enforceable plan and includes all of the following correlated elements:

(1) A land-use plan for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the region, including but not limited to an indication or allocation of maximum population densities and permitted uses.

(2) A transportation plan for the integrated development of a regional system of transportation, including but not limited to parkways, highways, transportation facilities, transit routes, waterways, navigation facilities, public transportation facilities, bicycle facilities, and appurtenant terminals and facilities for the movement of people and goods within the region. The goal of transportation planning shall be:

(A) To reduce dependency on the automobile by making more effective use of existing transportation modes and of public transit to move people and goods within the region; and

(B) To reduce to the extent feasible air pollution which is caused by motor vehicles.

Where increases in capacity are required, the agency shall give preference to providing such capacity through public transportation and public programs and projects related to transportation. The agency shall review and consider all existing transportation plans in preparing its regional transportation plan pursuant to this paragraph.

The plan shall provide for an appropriate transit system for the region. The plan shall give consideration to:

(A) Completion of the Loop Road in the States of Nevada and California;

(B) Utilization of a light rail mass transit system in the South Shore area; and

(C) Utilization of a transit terminal in the Kingsbury Grade area.

Until the regional plan is revised, or a new transportation plan is adopted in accordance with this paragraph, the agency has no effective transportation plan.

(3) A conservation plan for the preservation, development, utilization, and management of the scenic and other natural resources within the basin, including but not limited to, soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.

(4) A recreation plan for the development, utilization, and management of the recreational resources of the region, including but not limited to, wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, marinas, areas for skiing and other recreational facilities.

(5) A public services and facilities plan for the general location, scale and provision of public services and facilities, which, by the nature of their function, size, extent and other characteristics are necessary or appropriate for inclusion in the regional plan.

In formulating and maintaining the regional plan, the planning commission and governing body shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the counties and cities within the region, the plans and planning activities of the State, Federal and other public agencies and nongovernmental agencies and organizations which affect or are concerned with planning and development within the region.

(d) The regional plan shall provide for attaining and maintaining Federal, State, or local air and water quality standards, whichever are strictest, in the respective portions of the region for which the standards are applicable.

The agency may, however, adopt air or water quality standards or control measures more stringent than the applicable State implementation plan or the applicable Federal, State, or local standards for the region, if it finds that such additional standards or control measures are necessary to achieve the purposes of this compact. Each element of the regional plan, where applicable, shall, by ordinance, identify the means and time schedule by which air and water quality standards will be attained.

(e) Except for the Regional Transportation Plan of the California Tahoe Regional Planning Agency, the regional plan, ordinances, rules and regulations adopted by the California Tahoe Regional Planning Agency in effect on July 1, 1980, shall be the regional plan, ordinances, rules and regulations of the Tahoe Regional Planning Agency for that portion of the Tahoe region located in the State of California. Such plan, ordinance, rule or regulation may be amended or repealed by the governing body of the agency. The plans, ordinances, rules and regulation of the Tahoe Regional Planning Agency that do not conflict with, or are not addressed by, the California Tahoe Regional Planning Agency's plans, ordinances, rules and regulations referred to in this subdivision shall continue to be applicable unless amended or repealed by the governing body of the agency. No provision of the regional plan, ordinances, rules and regulations of the California Tahoe Regional Planning Agency referred to in this subdivision shall apply to that portion of the region within the State of Nevada, unless such provision is adopted for the Nevada portion of the region by the governing body of the agency.

(f) The regional plan, ordinances, rules and regulations of the Tahoe Regional Planning Agency apply to that portion of the region within the State of Nevada.

(g) The agency shall adopt ordinances prescribing specific written findings that the agency must make prior to approving any project in the region. These findings shall relate to environmental protection and shall insure that the project under review will not adversely affect implementation of the regional plan and will not cause the adopted environmental threshold carrying capacities of the region to be exceeded.

(h) The agency shall maintain the data, maps and other information developed in the course of formulating and administering the regional plan, in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other agencies of government and by private organizations and individuals concerned.

(i) Where necessary for the realization of the regional plan, the agency may engage in collaborative planning with local governmental jurisdictions located outside the region, but contiguous to its boundaries. In formulating and implementing the regional plan, the agency shall seek the cooperation and consider the recommendations of counties and cities and other agencies of local government, of State and Federal agencies, of educational institutions and research organizations, whether public or private, and of civic groups and private persons. (94 Stat. 3239)

ARTICLE VI.—AGENCY'S POWERS

(a) The governing body shall adopt all necessary ordinances, rules, and regulations to effectuate the adopted regional plan. Except as otherwise provided in this compact, every such ordinance, rule or regulation shall establish a minimum standard applicable throughout the region. Any political subdivision or public agency may adopt and enforce an equal or higher requirement applicable to the same subject of regulation in its territory. The regulations of the agency shall contain standards including but not limited to the following: Water purity and clarity; subdivision; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavation, cuts and grading; piers, harbors, breakwaters or channels and other shoreline developments; waste disposal in shoreline areas; waste disposal from boats; mobile-home parks; house relocation; outdoor advertising; flood plain protection; soil and sedimentation control; air pollution; and watershed protection. Whenever possible without diminishing the effectiveness of the regional plan, the ordinances, rules, regulations and policies shall be confined to matters which are general and regional in application, leaving to the jurisdiction of the respective States, counties and cities the enactment of specific and local ordinances, rules, regulations and policies which conform to the regional plan.

The agency shall prescribe by ordinance those activities which it has determined will not have substantial effect on the land, water, air, space or any other natural resources in the region and therefore will be exempt from its review and approval.

Every ordinance adopted by the agency shall be published at least once by title in a newspaper or combination of newspapers whose circulation is general throughout the region. Except an ordinance adopting or amending the regional plan, no ordinance shall become effective until 60 days after its adoption. Immediately after its adoption, a copy of each ordinance shall be transmitted to the governing body of each political subdivision having territory within the region.

(b) No project other than those to be reviewed and approved under the special provisions of subdivisions (d), (e), (f) and (g) may be developed in the region without obtaining the review and approval of the agency and no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to subdivision (a) to effectuate that plan. The agency may approve a project

in the region only after making the written findings required by this subdivision or subdivision (g) of article V. Such findings shall be based on substantial evidence in the record.

Before adoption by the agency of the ordinances required in subdivision (g) of article V, the agency may approve a project in the region only after making written findings on the basis of substantial evidence in the record that the project is consistent with the regional plan then in effect and with applicable plans, ordinances, regulations, and standards of Federal and State agencies relating to the protection, maintenance and enhancement of environmental quality in the region.

(c) The legislatures of the States of California and Nevada find that in order to make effective the regional plan as revised by the agency, it is necessary to halt temporarily works of development in the region which might otherwise absorb the entire capability of the region for further development or direct it out of harmony with the ultimate plan. Subject to the limitation provided in this subdivision, from the effective date of the amendments to this compact until the regional plan is amended pursuant to subdivision (c) of article V, or until May 1, 1983, whichever is earlier:

(1) Except as otherwise provided in this paragraph, no new subdivision, planned unit development, or condominium project may be approved unless a complete tentative map or plan has been approved before the effective date of the amendments to this compact by all agencies having jurisdiction. The subdivision of land owned by a general improvement district, which existed and owned the land before the effective date of the amendments to this compact, may be approved if subdivision of the land is necessary to avoid insolvency of the district.

(2) Except as provided in paragraph (3), no apartment building may be erected unless the required permits for such building have been secured from all agencies having jurisdiction, prior to the effective date of the amendments to this compact.

(3) During each of the calendar years 1980, 1981 and 1982, no city or county may issue building permits which authorize the construction of a greater number of new residential units within the region than were authorized within the region by building permits issued by that city or county during the calendar year 1978. For the period of January through April, 1983, building permits authorizing the construction of no more than one-third of that number may be issued by each such city or county. For purposes of this paragraph a "residential unit" means either a single family residence or an individual residential unit within a larger building, such as an apartment building, a duplex or a condominium.

The legislatures find the respective numbers of residential units authorized within the region during the calendar year 1978 to be as follows:

1. City of South Lake Tahoe and El Dorado County (combined)	252
2. Placer County	278
3. Carson City	0
4. Douglas County	339
5. Washoe County	739

(4) During each of the calendar years 1980, 1981 and 1982, no city or county may issue building permits which authorize construction of a greater square footage of new commercial buildings within the region than were authorized within the region by building permits for commercial purposes issued by that city or county during the calendar year 1978. For the period of January through April, 1983, building permits authorizing the construction of no more than one-third the amount of that square footage may be issued by each such city or county.

The legislatures find the respective square footages of commercial buildings authorized within the region during calendar year 1978 to be as follows:

1. City of South Lake Tahoe and El Dorado County (combined)	64,324
2. Placer County	23,000
3. Carson City	0
4. Douglas County	57,354
5. Washoe County	50,600

(5) No structure may be erected to house gaming under a nonrestricted license.

(6) No facility for the treatment of sewage may be constructed or enlarged except:

(A) To comply, as ordered by the appropriate State agency for the control of water pollution, with existing limitations of effluent under the Clean Water Act, 33 U.S.C. § 1251 et seq., and the applicable State law for control of water pollution;

(B) To accommodate development which is not prohibited or limited by this subdivision; or

(C) In the case of Douglas County Sewer District #1, to modify or otherwise alter sewage treatment facilities existing on the effective date of the amendments to this compact so that such facilities will be able to treat the total volume of effluent for which they were originally designed, which is 3.0 million gallons per day. Such modification or alteration is not a "project"; is not subject to the requirements of article VII; and does not require a permit from the agency. Before commencing such modification or alteration, however, the district shall submit to the agency its report identifying any significant soil erosion problems which may be caused by such modifications or alterations and the measures which the district proposes to take to mitigate or avoid such problems.

The moratorium imposed by this subdivision does not apply to work done pursuant to a right vested before the effective date of the amendments to this compact. Notwithstanding the expiration date of the moratorium imposed by this subdivision, no new highway may be built or existing highway widened to accommodate additional continuous lanes for automobiles until the regional transportation plan is revised and adopted.

The moratorium imposed by this subdivision does not apply to the construction of any parking garage which has been approved by the agency prior to May 4, 1979, whether that approval was affirmative or by default. The provisions of this paragraph are not an expression of legislative intent

that any such parking garage, the approval of which is the subject of litigation which was pending on the effective date of the amendments to this compact, should or should not be constructed. The provisions of this paragraph are intended solely to permit construction of such a parking garage if a judgment sustaining the agency's approval to construct that parking garage has become final and no appeal is pending or may lawfully be taken to a higher court.

(d) Subject to the final order of any court of competent jurisdiction entered in litigation contesting the validity of an approval by the Tahoe Regional Planning Agency, whether that approval was affirmative or by default, if that litigation was pending on May 4, 1979, the agency and the States of California and Nevada shall recognize as a permitted and conforming use:

(1) Every structure housing gaming under a nonrestricted license which existed as a licensed gaming establishment on May 4, 1979, or whose construction was approved by the Tahoe Regional Planning Agency affirmatively or deemed approved before that date. The construction or use of any structure to house gaming under a nonrestricted license not so existing or approved, or the enlargement in cubic volume of any such existing or approved structure is prohibited.

(2) Every other nonrestricted gaming establishment whose use was seasonal and whose license was issued before May 4, 1979, for the same season and for the number and type of games and slot machines on which taxes or fees were paid in the calendar year 1978.

(3) Gaming conducted pursuant to a restricted gaming license issued before May 4, 1979, to the extent permitted by that license on that date.

The area within any structure housing gaming under a nonrestricted license which may be open to public use (as distinct from that devoted to the private use of guests and exclusive of any parking area) is limited to the area existing or approved for public use on May 4, 1979. Within these limits, any external modification of the structure which requires a permit from a local government also requires approval from the agency. The agency shall not permit restaurants, convention facilities, showrooms or other public areas to be constructed elsewhere in the region outside the structure in order to replace areas existing or approved for public use on May 4, 1979.

(e) Any structure housing licensed gaming may be rebuilt or replaced to a size not to exceed the cubic volume, height and land coverage existing or approved on May 4, 1979, without the review or approval of the agency or any planning or regulatory authority of the State of Nevada whose review or approval would be required for a new structure.

(f) The following provisions apply to any internal or external modification, remodeling, change in use, or repair of a structure housing gaming under a nonrestricted license which is not prohibited by article VI(d):

(1) The agency's review of an external modification of the structure which requires a permit from a local government is limited to determining whether the external modification will do any of the following:

(A) Enlarge the cubic volume of the structure;

(B) Increase the total square footage of area open to one approved for public use on May 4, 1979;

(C) Convert an area devoted to the private use of guests to an area open to public use;

(D) Increase the public area open to public use which is used for gaming beyond the limits contained in paragraph (3); and

(E) Conflict with or be subject to the provisions of any of the agency's ordinances that are generally applicable throughout the region.

The agency shall make this determination within 60 days after the proposal is delivered to the agency in compliance with the agency's rules or regulations governing such delivery unless the applicant has agreed to an extension of this time limit. If an external modification is determined to have any of the effects enumerated in subparagraphs(A) through (C), it is prohibited. If an external modification is detemined to have any of the effects enumerated in subparagraph (D) or (E), it is subject to the applicable provisions of this compact. If an external modification is determined to have no such effect, it is not subject to the provisions of this compact.

(2) Except as provided in paragraph (3), internal modification, remodeling, change in use or repair of a structure housing gaming under a nonrestricted license is not a project and does not require the review or approval of the agency.

(3) Internal modification, remodeling, change in use or repair of areas open to public use within a structure housing gaming under a nonrestricted license which alone or in combination with any other such modification, remodeling, change in use or repair will increase the total portion of those areas which is actually used for gaming by more than the product of the total base area, as defined below, in square feet existing on or approved before August 4, 1980, multiplied by 15 percent constitutes a project and is subject to all of the provisions of this compact relating to projects. For purposes of this paragraph and the determination required by article VI(g), base area means all of the area within a structure housing gaming under a nonrestricted license which may be open to public use, whether or not gaming is actually conducted or carried on in that area, except retail stores, convention centers and meeting rooms, administrative offices, kitchens, maintenance and storage areas, rest rooms, engineering and mechanical rooms, accounting rooms and counting rooms.

(g) In order to administer and enforce the provisions of paragraphs (d), (e) and (f), the State of Nevada, through its appropriate planning or regulatory agency, shall require the owner or licensee of a structure housing gaming under a nonrestricted license to provide:

(1) Documents containing sufficient information for the Nevada agency to establish the following relative to the structure:

(A) The location of its external walls;

(B) Its total cubic volume;

(C) Within its external walls, the area in square feet open or approved

for public use and the area in square feet devoted to or approved for the private use of guests on May 4, 1979;

(D) The amount of surface area of land under the structure; and

(E) The base area as defined in paragraph (f)(3) in square feet existing on or approved before August 4, 1980.

(2) An informational report whenever any internal modification, remodeling, change in use, or repair will increase the total portion of the areas open to public use which is used for gaming.

The Nevada agency shall transmit this information to the Tahoe Regional Planning Agency.

(h) Gaming conducted pursuant to a restricted gaming license is exempt from review by the agency if it is incidental to the primary use of the premises.

(i) The provisions of subdivisions (d) and (e) are intended only to limit gaming and related activities as conducted within a gaming establishment, or construction designed to permit the enlargement of such activities, and not to limit any other use of property zoned for commercial use or the accommodation of tourists, as approved by the agency.

(j) Legal actions arising out of or alleging a violation of the provisions of this compact, of the regional plan or of an ordinance or regulation of the agency or of a permit or a condition of a permit issued by the agency are governed by the following provisions:

(1) This subdivision applies to:

(A) Actions arising out of activities directly undertaken by the agency.

(B) Actions arising out of the issuance to a person of a lease, permit, license or other entitlement for use by the agency.

(C) Actions arising out of any other act or failure to act by any person or public agency.

Such legal actions may be filed and the provisions of this subdivision apply equally in the appropriate courts of California and Nevada and of the United States.

(2)Venue lies:

(A) If a civil or criminal action challenges an activity by the agency or any person which is undertaken or to be undertaken upon a parcel of real property, in the State or Federal judicial district where the real property is situated.

(B) If an action challenges an activity which does not involve a specific parcel of land (such as an action challenging an ordinance of the agency), in any State or Federal court having jurisdiction within the region.

(3) Any aggrieved person may file an action in an appropriate court of the States of California or Nevada or of the United States alleging noncompliance with the provisions of this compact or with an ordinance or regulation of the agency. In the case of governmental agencies, "aggrieved person" means the Tahoe Regional Planning Agency or any State, Federal or local agency. In the case of any person other than a governmental agency who challenges an action of the Tahoe Regional Planning

Agency, "aggrieved person" means any person who has appeared, either in person, through an authorized representative, or in writing, before the agency at an appropriate administrative hearing to register objection to the action which is being challenged, or who had good cause for not making such an appearance.

(4) A legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency, or out of the granting or denial of any permit, shall be commenced within 60 days after final action by the agency. All other legal actions shall be commenced within 65 days after discovery of the cause of action.

(5) In any legal action filed pursuant to this subdivision which challenges an adjudicatory act or decision of the agency to approve or disapprove a project, the scope of judicial inquiry shall extend only to whether there was prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law or if the act or decision of the agency was not supported by substantial evidence in light of the whole record. In making such a determination the court shall not exercise its independent judgment on evidence but shall only determine whether the act or decision was supported by substantial evidence in light of the whole record. In any legal action filed pursuant to this subdivision which challenges a legislative act or decision of the agency (such as the adoption of the regional plan and the enactment of implementing ordinances), the scope of the judicial inquiry shall extend only to the questions of whether the act or decision has been arbitrary, capricious or lacking substantial evidentiary support or whether the agency has failed to proceed in a manner required by law.

(6) The provisions of this subdivision do not apply to any legal proceeding pending on the date when this subdivision becomes effective. Any such legal proceeding shall be conducted and concluded under the provisions of law which were applicable prior to the effective date of this subdivision.

(7) The security required for the issuance of a temporary restraining order or preliminary injunction based upon an alleged violation of this compact or any ordinance, plan, rule or regulation adopted pursuant thereto is governed by the rule or statute applicable to the court in which the action is brought, unless the action is brought by a public agency or political subdivision to enforce its own rules, regulations and ordinances in which case no security shall be required.

(k) The agency shall monitor activities in the region and may bring enforcement actions in the region to insure compliance with the regional plan and adopted ordinances, rules, regulations and policies. If it is found that the regional plan, or ordinances, rules, regulations and policies are not being enforced by a local jurisdiction, the agency may bring action in a court of competent jurisdiction to insure compliance.

(l) Any person who violates any provision of this compact or of any ordinance or regulation of the agency or of any condition of approval imposed by the agency is subject to a civil penalty not to exceed $5,000. Any such

person is subject to an additional civil penalty not to exceed $5,000 per day, for each day on which such a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence.

(m) The agency is hereby empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by State or Federal law.

(n) Each intergovernmental contract or agreement shall provide for its own funding and staffing, but this shall not preclude financial contributions from the local authorities concerned or from supplementary sources.

(o) Every record of the agency, whether public or not, shall be open for examination to the legislature and controller of the State of California and the legislative auditor of the State of Nevada.

(p) Approval by the agency of any project expires 3 years after the date of final action by the agency or the effective date of the amendments to this compact, whichever is late, unless construction is begun within that time and diligently pursued thereafter, or the use or activity has commenced. In computing the 3-year period any period of time during which the project is the subject of a legal action which delays or renders impossible the diligent pursuit of that project shall not be counted. Any license, permit or certificate issued by the agency which has an expiration date shall be extended by that period of time during which the project is the subject of such legal action as provided in this subdivision.

(q) The governing body shall maintain a current list of real property known to be available for exchange with the United States or with other owners of real property in order to facilitate exchanges of real property by owners of real property in the region. (94 Stat. 3242)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Clean Water Act, referred to in Article VI(c)(6)(A) of the text, as amended by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, are set forth in Volume IV in chronological order, under the 1972 Act, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

ARTICLE VII.—ENVIRONMENTAL IMPACT STATEMENTS

(a) The Tahoe Regional Planning Agency when acting upon matters that have a significant effect on the environment shall:

(1) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(2) Prepare and consider a detailed environmental impact statement before deciding to approve or carry out any project. The detailed environmental impact statement shall include the following:

(A) The significant environmental impacts of the proposed project;

(B) Any significant adverse environmental effects which cannot be avoided should the project be implemented;

(C) Alternatives to the proposed project;

(D) Mitigation measures which must be implemented to assure meeting standards of the region;

(E) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(F) Any significant irreversible and irretrievable committments of resources which would be involved in the proposed project should it be implemented; and

(G) The growth-inducing impact of the proposed project;

(3) Study, develop and describe appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources;

(4) Make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment; and

(5) Initiate and utilize ecological information in the planning and development of resource-oriented projects.

(b) Prior to completing an environmental impact statement, the agency shall consult with and obtain the comments of any Federal, State or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State and local agencies which are authorized to develop and enforce environmental standards shall be made available to the public and shall accompany the project through the review processes. The public shall be consulted during the environmental impact statement process and views shall be solicited during a public comment period not to be less than 60 days.

(c) Any environmental impact statement required pursuant to this article need not repeat in its entirety any information or data which is relevant to such a statement and is a matter of public record or is generally available to the public, such as information contained in an environmental impact report prepared pursuant to the California Environmental Quality Act or a Federal environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969. However, such information or data shall be briefly described in the environmental impact statement and its relationship to the environmental impact statement shall be indicated.

In addition, any person may submit information relative to a proposed project which may be included, in whole or in part, in any environmental impact statement required by this article.

EXPLANATORY NOTE

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970 Public Law 91-190, 83 Stat. 852, 42 U.S.C. § 4321 et seq.), referred to in Article VII(c) of the text, appears in Volume IV in chronological order.

(d) In addition to the written findings specified by agency ordinance to implement the regional plan, the agency shall make either of the following written findings before approving a project for which an environmental impact statement was prepared:

(1) Changes or alterations have been required in or incorporated into such project which avoid or reduce the significant adverse environmental effects to a less than significant level; or

(2) Specific considerations, such as economic, social or technical, make infeasible the mitigation measures or project alternatives discussed in the environmental impact statement on the project.

A separate written finding shall be made for each significant effect identified in the environmental impact statement on the project. All written findings must be supported by substantial evidence in the record.

(e) The agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this compact in order to recover the estimated costs incurred by the agency in preparing an environmental impact statement under this article.

(f) The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environment and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment. (94 Stat. 3249)

ARTICLE VIII.—FINANCES

(a) On or before September 30 of each calendar year the agency shall establish the amount of money necessary to support its activities for the next succeeding fiscal year commencing July 1 of the following year. The agency shall apportion $75,000 of this amount among the counties within the region on the same ratio to the total sum required as the full cash valuation of taxable property within the region. In addition, each county within the region in California shall pay $18,750 to the agency and each county within the region in Nevada, including Carson City, shall pay $12,500 to the agency, from any funds available therefor. The State of California and the State of Nevada may pay to the agency by July 1 of each year any additional sums necessary to support the operations of the agency pursuant to this compact. If additional funds are required, the agency shall make a request for the funds to the States of California and Nevada. Requests for State funds must be apportioned two-thirds from California and one-third from Nevada. Money appropriated shall be paid within 30 days.

(b) The agency may fix and collect reasonable fees for any services rendered by it.

(c) The agency shall submit an itemized budget to the States for review with any request for State funds, shall be strictly accountable to any county in the region and the States for all funds paid by them to the agency and

shall be strictly accountable to all participating bodies for all receipts and disbursement.

(d) The agency is authorized to receive gifts, donations, subventions, grants, and other financial aids and funds; but the agency may not own land except as provided in subdivision (i) of article III.

(e) The agency shall not obligate itself beyond the moneys due under this article for its support from the several counties and the States for the current fiscal year, plus any moneys on hand or irrevocably pledged to its support from other sources. No obligation contracted by the agency shall bind either of the party States or any political subdivision thereof. (94 Stat. 3250)

ARTICLE IX.—TRANSPORTATION DISTRICT

(a) The Tahoe transportation district is hereby established as a special purpose district. The boundaries of the district are coterminous with those of the region.

(b) The business of the district shall be managed by a board of directors consisting of:

(1) One member of the county board of supervisors of each of the counties of El Dorado and Placer;

(2) One member of the city council of the city of South Lake Tahoe;

(3) One member each of the board of county commissioners of Douglas County and of Washoe County;

(4) One member of the board of supervisors of Carson City;

(5) The director of the California Department of Transportation; and

(6) The director of the department of transportation of the State of Nevada.

Any director may designate an alternate.

(c) The vote of at least five of the directors must agree to take action. If at least five votes in favor of an action are not cast, an action of rejection shall be deemed to have been taken.

(d) The Tahoe transportation district may in accordance with the adopted transportation plan:

(1) Own and operate a public transportation system to the exclusion of all other publicly owned transportation systems in the region.

(2) Acquire upon mutually agreeable terms any public transportation system or facility owned by a county, city or special purpose district within the region.

(3) Hire the employees of existing public transportation systems that are acquired by the district without loss of benefits to the employees, bargain collectively with employee organization, and extend pension and other collateral benefits to employees.

(4) Fix the rates and charges for transit services provided pursuant to this subdivision.

(5) Issue revenue bonds and other evidence of indebtedness.

(6) By resolution, determine and propose for adoption a tax for the purpose of obtaining services of the district. The tax proposed must be general and of uniform operation throughout the region, and may not

be graduated in any way. The district is prohibited from imposing an ad valorem tax, a tax measured by gross or net receipts on business, a tax or charge that is assessed against people or vehicles as they enter or leave the region, and any tax, direct or indirect, on gaming tables or devices. Any such proposition must be submitted to the voters of the district and shall become effective upon approval of two-thirds of the voters voting on the proposition. The revenues from any such tax must be used for the service for which it was imposed, and for no other purpose.

(7) Provide service from inside the region to convenient airport, railroad and interstate bus terminals without regard to the boundaries of the region.

(e) The legislatures of the States of California, and Nevada may, by substantively identical enactments, amend this article. (94 Stat. 3251)

ARTICLE X.—MISCELLANEOUS

(a) It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. Except as provided in subdivision (c), the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the remaining State and in full force and effect as to the State affected as to all severable matters.

(b) The agency shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the legislature of either State concurred in by the legislature of the other.

(c) A State party to this compact may withdraw therefrom by enacting a statute repealing the compact. Notice of withdrawal shall be communicated officially and in writing to the Governor of the other State and to the agency administrators. This provision is not severable, and if it is held to be unconstitutional or invalid, no other provision of this compact shall be binding upon the State of Nevada or the State of California.

(d) No provision of this compact shall have any effect upon the allocation, distribution or storage or interstate waters or upon any appropriative water right.

Sec. 2. [Cooperation with Tahoe Regional Planning Agency.]—The Secretary of Agriculture and the heads of other appropriate agencies are authorized, upon the request of the Tahoe Regional Planning Agency, to cooperate with the Tahoe Regional Planning Agency in all respects compatible with carrying out the normal duties of their agencies. (94 Stat. 3252)

Sec. 3. [Consent upon condition that President may appoint U.S. representative to Planning Agency.]—The consent to the compact by the United States is subject to the condition that the President may appoint a

nonvoting representative of the United States to the governing body of the Tahoe Regional Planning Agency. (94 Stat. 3252)

Sec. 4. [Congressional consent to additional Planning Agency powers.]—Any additional powers conferred on the agency pursuant to article X, section 1(b) of the compact shall not be exercised unless consented to by the Congress. (94 Stat. 3252)

Sec. 5. [No effect on powers or obligations of United States, applicability of United States law, or rights of Indians subject to United States jurisdiction.]—Nothing contained in this Act or in the compact consented to shall in any way affect the powers, rights, or obligations of the United States, or the applicability of any law or regulation of the United States in, over or to the region or waters which are the subject of the compact, or in any way affect rights owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States. (94 Stat. 3252)

Sec. 6. [Congressional right to information on Planning Agency.]—The right is hereby reserved by the Congress or any of its standing committees to require the disclosure and furnishing of such information and data by or concerning the Tahoe Regional Planning Agency as is deemed appropriate by the Congress or such committee. (94 Stat. 3253)

Sec. 7. [Reservation of right to amend, alter, or repeal Act.]—The right to alter, amend, or repeal this Act is hereby expressly reserved. (94 Stat. 3253)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Consent of Congress to Prior Compact. Section 1 of the Act of December 18, 1969 (83 Stat. 360) granted the consent of Congress to a prior Tahoe Regional Planning Compact adopted by the states of California and Nevada. The 1969 Act and Compact appear in Volume IV in chronological order. Article I of the prior Compact set forth findings and declarations of policy. Article II established definitions of certain terms used in the Compact. Article III provided for the organization of the Tahoe Regional Planning Agency, the appointment of its members, and the selection of an advisory planning commission. Article IV concerned personnel matters relating to the Planning Agency. Article V required the recommendation of a regional plan for the Lake Tahoe area by the advisory commission and adoption of a plan by the Planning Agency. The plan, which would include planning for land-use, transportation, conservation, recreation, and public facilities, was to be enforced by the Planning Agency and the states, counties, and cities in the Lake Tahoe region. Article VI listed the Planning Agency's powers, Article VII concerned the Agency's finances, and Article VIII set forth miscellaneous provisions. Section 2 of the 1969 Act authorized the Secretary of Agriculture and the Secretary of the Interior to cooperate with the Planning Agency. Sections 3 through 7 of the 1969 Act are substantially the same as the corresponding sections of the 1980 Act. For legislative history of the 1969 Act, see Public Law 91-148 in the 91st Congress; S. Rept. No. 510 on S. 118, November 4, 1969; and H.R. Rept. No. 650, November 18, 1969.

Legislative History. H.R. 8235, Public Law 96-551 in the 96th Congress. Passed House December 1, 1980. Passed Senate December 3, 1980.

RED RIVER COMPACT

An act to grant the consent of the United States to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas. (Act of December 22, 1980, Public Law 96-564, 94 Stat. 3305)

Section 1. [Consent of Congress to Red River Compact.]—The consent of Congress is hereby given to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas, of May 12, 1978, as ratified by the States of Arkansas, Louisiana, Oklahoma, and Texas, as follows:

PREAMBLE

The States of Arkansas, Louisiana, Oklahoma, and Texas, pursuant to the acts of their respective Governors or legislatures, or both, being moved by considerations of interstate comity, have resolved to compact with respect to the water of the Red River and its tributaries. By Act of Congress, Public Law No. 346 (84th Congress, First Session), the consent of the United States has been granted for said States to negotiate and enter into a compact providing for an equitable apportionment of such water; and pursuant to that Act the President has designated the representative of the United States.

Further, the consent of Congress has been given for two or more States to negotiate and enter into agreements relating to water pollution control by the provisions of the Federal Water Pollution Control Act (Public Law 92-500, 33 U.S.C. 1251 et seq.).

The Signatory States acting through their duly authorized Compact Commissioners, after several years of negotiations, have agreed to an equitable apportionment of the water of the Red River and its tributaries and do hereby submit and recommend that this compact be adopted by the respective legislatures and approved by Congress as hereinafter set forth:

EXPLANATORY NOTE

References in the Text. The Act of August 11, 1955 (69 Stat. 654), referred to in the text as Public Law 84-346, granted the consent of Congress to negotiation of the Red River Compact. The 1955 Act appears in Volume II at page 1231. Extracts from the Federal Water Pollution Control Act, also referred to in the text, known as the Clean Water Act, as amended by the Act of October 18, 1972 (Public Law 92-500, 88 Stat. 816) and subsequent amendatory legislation, are set forth in Volume IV in chronological order, under the 1972 Act, as they appear in Chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

ARTICLE I

PURPOSES

Section 1.01. The principal purposes of this Compact are:

(a) To promote interstate comity and remove causes of controversy

between each of the affected states by governing the use, control and distribution of the interstate water of the Red River and its tributaries;

(b) To provide an equitable apportionment among the Signatory States of the water of the Red River and its tributaries;

(c) To promote an active program for the control and alleviation of natural deterioration and pollution of the water of the Red River Basin and to provide for enforcement of the laws related thereto;

(d) To provide the means for an active program for the conservation of water, protection of lives and property from floods, improvement of water quality, development of navigation and regulation of flows in the Red River Basin; and

(e) To provide a basis for state or joint state planning and action by ascertaining and identifying each state's share in the interstate water of the Red River Basin and the apportionment thereof.

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Each Signatory State may use the water allocated to it by this Compact in any manner deemed beneficial by that state. Each state may freely administer water rights and uses in accordance with the laws of that state, but such uses shall be subject to the availability of water in accordance with the apportionments made by this Compact.

Section 2.02. The use of water by the United States in connection with any individual Federal project shall be in accordance with the Act of Congress authorizing the project and the water shall be charged to the state or states receiving the benefit therefrom.

Section 2.03. Any Signatory State using the channel of Red River or its tributaries to convey stored water shall be subject to an appropriate reduction in the amount which may be withdrawn at the point of removal to account for transmission losses.

Section 2.04. The failure of any state to use any portion of the water allocated to it shall not constitute relinquishment or forfeiture of the right to such use.

Section 2.05. Each Signatory State shall have the right to:

(a) Construct conservation storage capacity for the impoundment of water allocated by this Compact;

(b) Replace within the same area any storage capacity recognized or authorized by this Compact made unusable by any cause, including losses due to sediment storage;

(c) Construct reservoir storage capacity for the purposes of flood and sediment control as well as storage of water which is either imported or is to be exported if such storage does not adversely affect the delivery of water apportioned to any other Signatory State; and

(d) Use the bed and banks of the Red River and its tributaries to convey stored water, imported or exported water, and water apportioned according to this Compact.

Section 2.06. Signatory States may cooperate to obtain construction of facilities of joint benefits to such states.

Section 2.07. Nothing in this Compact shall be deemed to impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority, in, over and to water of the Red River Basin.

Section 2.08. Nothing in this Compact shall be construed to include within the water apportioned by this Compact any water consumed in each state by livestock or for domestic purposes: *Provided, however,* the storage of such water is in accordance with the laws of the respective states but any such impoundment shall not exceed 200 acre-feet, or such smaller quantity as may be provided for by the laws of each state.

Section 2.09. In the event any state shall import water into the Red River Basin from any other river basin, the Signatory State making the importation shall have the use of such imported water.

Section 2.10. Nothing in this Compact shall be deemed to:

(a) Interfere with or impair the right or power of any Signatory State to regulate within its boundaries the appropriation, use, and control of water, or quality of water, not inconsistent with its obligations under this Compact;

(b) Repeal or prevent the enactment of any legislation or the enforcement of any requirement by any Signatory State imposing any additional conditions or restrictions to further lessen or prevent the pollution or natural deterioration of water within its jurisdiction; provided nothing contained in this paragraph shall alter any provision of this Compact dealing with the apportionment of water or the rights thereto; or

(c) Waive any state's immunity under the Eleventh Amendment of the Constitution of the United States, or as constituting the consent of any state to be sued by its own citizens.

Section 2.11. Accounting for apportionment purposes on interstate streams shall not be mandatory under the terms of the Compact until one or more affected states deem the accounting necessary.

Section 2.12. For the purposes of apportionment of the water among the Signatory States, the Red River is hereby divided into the following major subdivisions:

(a) Reach I—the Red River and tributaries from the New Mexico-Texas State boundary to Denison Dam;

(b) Reach II—the Red River from Denison Dam to the point where it crosses the Arkansas-Louisiana state boundary and all tributaries which contribute to the flow of the River within this reach;

(c) Reach III—the tributaries west of the Red River which cross the Texas-Louisiana state boundary, the Arkansas-Louisiana state boundary, and those which cross both the Texas-Arkansas state boundary and the Arkansas-Louisiana state boundary;

(d) Reach IV—the tributaries east of the Red River in Arkansas which cross the Arkansas-Louisiana state boundary; and

(e) Reach V—that portion of the Red River and tributaries in Louisiana not included in Reach III or in Reach IV.

Section 2.13. If any part or application of this Compact shall be declared invalid by a court of competent jurisdiction, all other severable provisions and applications of this Compact shall remain in full force and effect.

Section 2.14. Subject to the availability of water in accordance with this Compact, nothing in this Compact shall be held or construed to alter, impair, or increase, validate, or prejudice any existing water right or right of water use that is legally recognized on the effective date of this Compact by either statutes or courts of the Signatory State within which it is located.

ARTICLE III

DEFINITIONS

Section 3.01. In this Compact:

(a) The States of Arkansas, Louisiana, Oklahoma, and Texas are referred to as "Arkansas," "Louisiana," "Oklahoma," and "Texas," respectively, or individually as "State" or "Signatory State," or collectively as "States" or "Signatory States."

(b) The term "Red River" means the stream below the crossing of the Texas-Oklahoma state boundary at longitude 100 degrees west.

(c) The term "Red River Basin" means all of the natural drainage area of the Red River and its tributaries east of the New Mexico-Texas state boundary and above its junction with Atchafalaya and Old Rivers.

(d) The term "water of the Red River Basin" means the water originating in any part of the Red River Basin and flowing to or in the Red River or any of its tributaries.

(e) The term "tributary" means any stream which contributes to the flow of the Red River.

(f) The term "interstate tributary" means a tributary of the Red River, the drainage area of which includes portions of two or more Signatory States.

(g) The term "intrastate tributary" means a tributary of the Red River, the drainage area of which is entirely within a single Signatory State.

(h) The term "Commission" means the agency created by Article IX of this Compact for the administration thereof.

(i) The term "pollution" means the alteration of the physical, chemical or biological characteristics of water by the acts or instrumentalities of man which create or are likely to result in a material and adverse effect upon human beings, domestic or wild animals, fish and other aquatic life, or adversely affect any other lawful use of such water; *provided,* that for the purpose of this Compact, "pollution" shall not mean or include "natural deterioration."

(j) The term "natural deterioration" means the material reduction in the quality of water resulting from the leaching of solubles from the soils and rocks through or over which the water flows naturally.

(k) The term "designated water" means water released from storage, paid for by non-Federal interests, for delivery to a specific point of use or diversion.

(l) The term "undesignated water" means all water released from storage other than "designated water."

(m) the term "conservation storage capacity" means that portion of the active capacity of reservoirs available for the storage of water for subsequent beneficial use, and it excludes any portion of the capacity of reservoirs allocated solely to flood control and sediment control, or either of them.

(n) The term "runoff" means both the portion of precipitation which runs off the surface of a drainage area and that portion of the precipitation that enters the streams after passing through the portions of the earth.

ARTICLE IV

APPORTIONMENT OF WATER—REACH I

OKLAHOMA—TEXAS

Subdivision of Reach I and Apportionment of Water Therein

Reach I of the Red River is divided into topographic subbasins, with the water therein allocated as follows:

Section 4.01. Subbasin 1—Interstate streams—Texas.

(a) This includes the Texas portion of Buck Creek, Sand (lebos) Creek, Salt Fork Red River, Elm Creek, North Fork Red River, Sweetwater Creek, and Washita River, together with all their tributaries in Texas which lie west of the 100th Meridian.

(b) The annual flow within this subbasin is hereby apportioned sixty (60) percent to Texas and forty (40) percent to Oklahoma.

Section 4.02. Subbasin 2—Intrastate and Interstate streams—Oklahoma.

(a) This subbasin is composed of all tributaries of the Red River in Oklahoma and portions thereof upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west, beginning from Denison Dam and upstream to and including Buck Creek.

(b) The State of Oklahoma shall have free and unrestricted use of the water of this subbasin.

Section 4.03. Subbasin 3—Intrastate streams—Texas.

(a) This includes the tributaries of the Red River in Texas, beginning from Denison Dam and upstream to and including Prairie Dog Town Fork Red River.

(b) The State of Texas shall have free and unrestricted use of the water in this subbasin.

Section 4.04. Subbasin 4—Mainstem of the Red River and Lake Texoma.

(a) This subbasin includes all of Lake Texoma and the Red River beginning at Denison Dam and continuing upstream to the Texas-Oklahoma state boundary at longitude 100 degrees west.

(b) The storage of Lake Texoma and flow from the mainstem of the Red River into Lake Texoma is apportioned as follows:

(1) Oklahoma 200,000 acre-feet and Texas 200,000 acre-feet, which quantities shall include existing allocations and uses; and

(2) Additional quantities in a ratio of fifty (50) percent to Oklahoma and fifty (50) percent to Texas.

Section 4.05. Special Provisions.

(a) Texas and Oklahoma may construct, jointly or in cooperation with the United States, storage or other facilities for the conservation and use of water; provided that any facilities constructed on the Red River boundary between the two states shall not be inconsistent with the Federal legislation authorizing Denison Dam and Reservoir project.

(b) Texas shall not accept for filing, or grant a permit, for the construction of a dam to impound water solely for irrigation, flood control, soil conservation, mining and recovery of minerals, hydroelectric power, navigation, recreation and pleasure, or for any other purpose other than for domestic, municipal, and industrial water supply, on the mainstem of the North Fork Red River or any of its tributaries within Texas above Lugert-Altus Reservoir until the date that imported water, sufficient to meet the municipal and irrigation needs of Western Oklahoma is provided, or until January 1, 2000, whichever occurs first.

ARTICLE V

APPORTIONMENT OF WATER—REACH II

ARKANSAS, OKLAHOMA, TEXAS, AND LOUISIANA

Subdivision of Reach II and Allocation of Water Therein

Reach II of the Red River is divided into topographic subbasins, and the water therein is allocated as follows:

Section 5.01. Subbasin 1—Intrastate streams—Oklahoma.

(a) This subbasin includes those streams and their tributaries above existing, authorized and proposed last downstream major damsites, wholly in Oklahoma and flowing into Red River below Denison Dam and above the Oklahoma-Arkansas state boundary. These streams and their tributaries with existing authorized and proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Island-Bayou	Albany	85,200	33°51.5′ N	96°11.4′ W.
Blue River	Durant	147,000	33°55.5′ N	96°04.2′ W.
Boggy River	Boswell	1,243,800	34°01.6′ N	95°45.0′ W.
Kiamichi River	Hugo	240,700	34°01.0′ N	95°22.6′ W.

(b) Texas is apportioned the water of this subbasin and shall have unrestricted use thereof.

Section 5.02. Subbasin 2—Intrastate streams—Texas.

(a) This subbasin includes those streams and their tributaries above existing authorized or proposed last downstream major damsites, wholly in

Texas and flowing into Red River below Denison Dam and above the Texas-Arkansas state boundary. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Shawnee Creek	Randall Lake	5,400	33°48.1′ N	96°34.8′ W.
Brushy Creek	Valley Lake	15,000	33°38.7′ N	96°21.5′ W.
Bois d'Arc Creek	New Bonham Reservoir	130,600	33°42.9′ N	95°58.2′ W.
Coffee Mill Creek	Coffee Mill Lake	8,000	33°44.1′ N	95°58.0′ W.
Sandy Creek	Lake Crockett	3,900	33°44.5′ N	95°55.5′ W.
Sanders Creek	Pat Mayse	124,500	33°51.2′ N	95°32.9′ W.
Pine Creek	Lake Crook	11,011	33°43.7′ N	95°34.0′ W.
Big Pine Creek	Big Pine Lake	138,600	33°52.0′ N	95°11.7′ W.
Pecan Bayou	Pecan Bayou	625,000	33°41.1′ N	94°58.7′ W.
Mud Creek	Liberty Hill	97,700	33°33.0′ N	94°29.3′ W.
Mud Creek	KVW Ranch Lakes (3).	3,440	33°34.8′ N	94°27.3′ W.

(b) Texas is apportioned the water of this subbasin and shall have unrestricted use thereof.

Section 5.03. Subbasin 3—Interstate Streams—Oklahoma and Arkansas.

(a) This subbasin includes Little River and its tributaries above Millwood Dam.

(b) The States of Oklahoma and Arkansas shall have free and unrestricted use of the water of this subbasin within their respective states, subject, however, to the limitation, that Oklahoma shall allow a quantity of water equal to 40 percent of the total runoff originating below the following existing, authorized or proposed last downstream major damsites in Oklahoma to flow into Arkansas:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Little River	Pine Creek	70,500	34°06.8′ N	95°04.9′ W.
Glover Creek	Lukfata	258,600	34°08.5′ N	94°55.4′ W.
Mountain Fork River	Broken Bow	470,100	34°08.9′ N	94°41.2′ W.

(c) Accounting will be on an annual basis unless otherwise deemed necessary by the States of Arkansas and Oklahoma.

Section 5.04. Subbasin 4—Interstate streams—Texas and Arkansas.

(a) This subbasin shall consist of those streams and their tributaries above existing, authorized or proposed last downstream major damsites, originating in Texas and crossing the Texas-Arkansas state boundary before flowing into the Red River in Arkansas. These streams and their tributaries with existing, authorized or proposed last downstream major damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
McKinney Bayou Trib.	Bringle Lake	3,052	33°30.6′ N	94°06.2′ W.
Barkman Creek	Barkman Reservoir.	15,900	33°29.7′ N	94°10.3′ W.
Sulphur River	Texarkana	386,900	33°18.3′ N	94°09.6′ W.

(b) The State of Texas shall have the free and unrestricted use of the water of this subbasin.

Section 5.05. Subbasin 5—Mainstream of the Red River and tributaries.

(a) This subbasin includes that portion of the Red River, together with its tributaries, from Denison Dam down to the Arkansas-Louisiana state boundary, excluding all tributaries included in the other four subbasins of Reach II.

(b) Water within this subbasin is allocated as follows:

(1) The Signatory States shall have equal rights to the use of runoff originating in subbasin 5 and undesignated water flowing into subbasin 5, so long as the flow of the Red River at the Arkansas-Louisiana state boundary is 3,000 cubic feet per second or more, provided no state is entitled to more than 25 percent of the water in excess of 3,000 cubic feet per second.

(2) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary is less than 3,000 cubic feet per second, but more than 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow to flow into the Red River for delivery to the State of Louisiana a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 and 40 percent of undesignated water flowing into subbasin 5: *Provided, however,* That this requirement shall not be interpreted to require any state to release stored water.

(3) Whenever the flow of the Red River at the Arkansas-Louisiana state boundary falls below 1,000 cubic feet per second, the States of Arkansas, Oklahoma, and Texas shall allow a quantity of water equal to all the weekly runoff originating in subbasin 5 and all undesignated water flowing in subbasin 5 within their respective states to flow into the Red River as required to maintain a 1,000 cubic foot per second flow at the Arkansas-Louisiana state boundary.

(c) Whenever the flow at Index, Arkansas, is less than 526 c.f.s., the states of Oklahoma and Texas shall each allow a quantity of water equal to 40 percent of the total weekly runoff originating in subbasin 5 within their respective states to flow into the Red River: *Provided, however,* this provision shall be invoked only at the request of Arkansas, only after Arkansas has ceased all diversions from the Red River itself in Arkansas above Index, and only if the provisions of Subsections 5.05(b) (2) and (3) have not caused a limitation of diversions in subbasin 5.

(d) No state guarantees to maintain a minimum low flow to a downstream state.

Section 5.06. Special Provisions.

(a) Reservoirs within the limits of Reach II, subbasin 5, with a conservation storage capacity of 1,000 acre feet or less in existence or authorized on the date of the Compact pursuant to the rights and privileges granted by a Signatory State authorizing such reservoirs, shall be exempt from the provisions of Section 5.05; provided, if any right to store water in, or use water from, an existing exempt reservoir expires or is cancelled after the effective date of the Compact the exemption for such rights provided by this section shall be lost.

(b) A Signatory State may authorize a change in the purpose or place of use of water from a reservoir exempted by subparagraph (a) of this section without losing that exemption, if the quantity of authorized use and storage is not increased.

(c) Additionally, exemptions from the provisions of Section 5.05 shall not apply to direct diversions from Red River to off-channel reservoirs or lands.

ARTICLE VI

APPORTIONMENT OF WATER—REACH III

ARKANSAS, LOUISIANA, AND TEXAS

Subdivision of Reach III and Allocation of Water Therein

Reach III of the Red River is divided into topographic subbasins, and the water therein allocated, as follows:

Section 6.01. Subbasin 1—Interstate streams—Arkansas and Texas.

(a) This subbasin includes the Texas portion of those streams crossing the Arkansas-Texas state boundary one or more times and flowing through Arkansas into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

(b) Texas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Arkansas is entitled to forty (40) percent of the runoff of this subbasin.

Section 6.02. Subbasin 2—Interstate streams—Arkansas and Louisiana.

(a) This subbasin includes the Arkansas portion of those streams flowing from Subbasin 1 into Arkansas, as well as other streams in Arkansas which cross the Arkansas-Louisiana state boundary one or more times and flow into Cypress Creek-Twelve Mile Bayou watershed in Louisiana.

(b) Arkansas is apportioned sixty (60) percent of the runoff of this subbasin and shall have unrestricted use thereof; Louisiana is entitled to forty (40) percent of the runoff of this subbasin.

Section 6.03. Subbasin 3—Interstate streams—Texas and Louisiana.

(a) This subbasin includes the Texas portion of all tributaries crossing the Texas-Louisiana state boundary one or more times and flowing into Caddo Lake, Cypress Creek-Twelve Mile Bayou or Cross Lake, as well as the Louisiana portion of such tributaries.

(b) Texas and Louisiana within their respective boundaries shall each have the unrestricted use of the water of this subbasin subject to the following allocation:

(1) Texas shall have the unrestricted right to all water above Marshall, Lake O' the Pines, and Black Cypress damsites; however, Texas shall not cause runoff to be depleted to a quantity less than that which would have occurred with the full operation of Franklin County, Titus County, Ellison Creek, Johnson Creek, Lake O' the Pines, Marshall, and Black Cypress Reservoirs constructed, and those other impoundments and diversions existing on the effective date of this Compact. Any depletions of runoff in excess of the depletions described above shall be charged against Texas' apportionment of the water in Caddo Reservoir.

(2) Texas and Louisiana shall each have the unrestricted right to use fifty (50) percent of the conservation storage capacity in the present Caddo Lake for the impoundment of water for state use, subject to the provision that supplies for existing uses of water from Caddo Lake, on date of Compact, are not reduced.

(3) Texas and Louisiana shall each have the unrestricted right to fifty (50) percent of the conservation storage capacity of any future enlargement of Caddo Lake, provided, the two states may negotiate for the release of each state's share of the storage space on terms mutually agreed upon by the two states after the effective date of this Compact.

(4) Inflow to Caddo Lake from its drainage area downstream from Marshall, Lake O' the Pines, and Black Cypress damsites and downstream from other last downstream dams in existence on the date of the signing of the Compact document by the Compact Commissioners, will be allowed to continue flowing into Caddo Lake except that any manmade depletions to this inflow by Texas will be subtracted from the Texas share of the water in Caddo Lake.

(c) In regard to the water of interstate streams which do not contribute to the inflow to Cross Lake or Caddo Lake, Texas shall have the unrestricted right to divert and use this water on the basis of a division of runoff above the state boundary of sixty (60) percent to Texas and forty (40) percent to Louisiana.

(d) Texas and Louisiana will not construct improvements on the Cross Lake watershed in either state that will affect the yield of Cross Lake; provided, however, this subsection shall be subject to the provisions of Section 2.08.

Section 6.04. Subbasin 4—Interstate streams—Louisiana.

(a) This subbasin includes that area of Louisiana in Reach III not included within any other subbasin.

(b) Louisiana shall have free and unrestricted use of the water of this subbasin.

ARTICLE VII

APPORTIONMENT OF WATER—REACH IV

ARKANSAS AND LOUISIANA

Subdivision of Reach IV and Allocation of Water Therein

Reach IV of the Red River is divided into topographic subbasins, and the water therein allocated as follows:

Section 7.01. Subbasin 1—Intrastate streams—Arkansas.

(a) This subbasin includes those streams and their tributaries above last downstream major damsites originating in Arkansas and crossing the Arkansas-Louisiana state boundary before flowing into the Red River in Louisiana. Those major last downstream damsites are as follows:

Stream	Site	Ac-ft	Location	
			Latitude	Longitude
Ouachita River	Lake Catherine	19,000	34°26.6′ N	93°01.6′ W.
Caddo River	DeGray Lake	1,377,000	34°13.2′ N	93°06.6′ W.
Little Missouri River.	Lake Greeson	600,000	34°08.9′ N	93°42.9′ W.
Alum Fork, Saline River.	Lake Winona	63,264	32°47.8′ N	92°51.0′ W.

(b) Arkansas is apportioned the waters of this subbasin and shall have unrestricted use thereof.

Section 7.02. Subbassin 2—Interstate Streams—Arkansas and Louisiana.

(a) This subbasin shall consist of Reach IV less subbasin 1 as defined in Section 7.01(a) above.

(b) The State of Arkansas shall have free and unrestricted use of the water of this reach subject to the limitation that Arkansas shall allow a quantity of water equal to forty (40) percent of the weekly runoff originating below or flowing from the last downstream major damsite to flow into Louisiana. Where there are no designated last downstream damsites, Arkansas shall allow a quantity of water equal to forty (40) percent of the total weekly runoff originating above the state boundary to flow into Louisiana. Use of water in this subbasin is subject to low flow provisions of subparagraph 7.03(b).

Section 7.03. Special Provisions.

(a) Arkansas may use the beds and banks of segments of Reach IV for the purpose of conveying its share of water to designated downstream diversions.

(b) The State of Arkansas does not guarantee to maintain a minimum low flow for Louisiana in Reach IV. However, on the following streams when the use of water in Arkansas reduces the flow at the Arkansas-Louisiana state boundary to the following amounts:

(1) Ouachita—780 cfs
(2) Bayou Bartholomew—80 cfs
(3) Boeuf River—40 cfs
(4) Bayou Macon—40 cfs

the State of Arkansas pledges to take affirmative steps to regulate the diversions of runoff originating or flowing into Reach IV in such a manner as to permit an equitable apportionment of the runoff as set out herein to flow into the State of Louisiana. In its control and regulation of the water of Reach IV any adjudication or order rendered by the State of Arkansas

or any of its instrumentalities or agencies affecting the terms of this Compact shall not be effective against the State of Louisiana nor any of its citizens or inhabitants until approved by the Commission.

ARTICLE VIII

APPORTIONMENT OF WATER—REACH V

Section 8.01. Reach V of the Red River consists of the mainstem Red River and all of its tributaries lying wholly within the State of Louisiana. The State of Louisiana shall have free and unrestricted use of the water of this subbasin.

ARTICLE IX

ADMINISTRATION OF THE COMPACT

Section 9.01. There is hereby created an interstate administrative agency to be known as the "Red River Compact Commission," hereinafter called the "Commission." The Commission shall be composed of two representatives from each Signatory State who shall be designated or appointed in accordance with the laws of each state, and one Commissioner representing the United States, who shall be appointed by the President. The Federal Commissioner shall be the Chairman of the Commission but shall not have the right to vote. The failure of the President to appoint a Federal Commissioner will not prevent the operation or effect of this Compact, and the eight representatives from the Signatory States will elect a Chairman for the Commission.

Section 9.02. The Commission shall meet and organize within 60 days after the effective date of this Compact. Thereafter, meetings shall be held at such times and places as the Commission shall decide.

Section 9.03. Each of the two Commissioners from each state shall have one vote: *Provided, however,* That if only one representative from a state attends he is authorized to vote on behalf of the absent Commissioner from that state. Representatives from three states shall constitute a quorum. Any action concerned with administration of this Compact or any action requiring compliance with specific terms of this Compact shall require six concurring votes. If a proposed action of the Commission affects existing water rights in a State, and that action is not expressly provided for in this Compact, eight concurring votes shall be required.

Section 9.04.

(a) The salaries and personal expenses of each state's representative shall be paid by the government that it represents, and the salaries and personal expenses of the Federal Commissioner will be paid for by the United States.

(b) The Commission's expenses for any additional stream flow gaging stations shall be equitable apportioned among the states involved in the reach in which the stream flow gaging stations are located.

(c) All other expenses incurred by the Commission shall be borne equally by the Signatory States and shall be paid by the Commission out of the

"Red River Compact Commission Fund." Such Fund shall be initiated and maintained by equal payments of each state into the fund. Disbursement shall be made from the fund in such manner as may be authorized by the Commission. Such fund shall not be subject to audit and accounting procedures of the State; however, all receipts and disbursements of the fund by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audits shall be included in and become a part of the annual report of the Commission. Each State shall have the right to make its own audit of the accounts of the Commission at any reasonable time.

ARTICLE X

POWERS AND DUTIES OF THE COMMISSION

Section 10.01. The Commission shall have the power to:

(a) Adopt rules and regulations governing its operation and enforcement of the terms of the Compact;

(b) Establish and maintain an office for the conduct of its affairs and if desirable, from time to time, change its location;

(c) Employ or contract with such engineering, legal, clerical, and other personnel as it may determine necessary for the exercise of its functions under this Compact without regard to the Civil Service Laws of any Signatory State; provided that such employees shall be paid by and be responsible to the Commission and shall not be considered employees of any Signatory State;

(d) Acquire, use and dispose of such real and personal property as it may consider necessary;

(e) Enter into contracts with appropriate State or Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records and for the preparation of reports;

(f) Secure from the head of any department or agency of the Federal or State government such information as it may need or deem to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed; provided such information is not privileged and the department or agency is not precluded by law from releasing same;

(g) Make findings, recommendations, or reports in connection with carrying out the purposes of this compact, including, but not limited to, a finding that a Signatory State is or is not in violation of any of the provisions of this Compact. The Commission is authorized to make such investigations and studies, and to hold such hearings as it may deem necessary for said purposes. It is authorized to make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of any Signatory State, or the United States, as may have any interest in or jurisdiction over the subject matter. The making of finds, [sic] recommendations, or reports by the Commission shall not be a condition precedent to the instituting or maintaining of

any action or proceeding of any kind by a Signatory State in any court or tribunal, or before any agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions; and

(h) Print or otherwise reproduce and distribute its proceedings and reports.

Section 10.02. The Commission shall:

(a) Cause to be established, maintained, and operated such stream, reservoir and other gaging stations as are necessary for the proper administration of the Compact;

(b) Cause to be collected, analyzed and reported such information on stream flows, water quality, water storage and such other data as are necessary for the proper administration of the Compact;

(c) Perform all other functions required of it by the Compact and do all things necessary, proper and convenient in the performance of its duties thereunder;

(d) Prepare and submit to the Governor of each of the Signatory States a budget covering the anticipated expenses of the Commission for the following fiscal biennium;

(e) Prepare and submit an annual report to the Governor of each Signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

(f) Make available to the Governor or to any official agency of the Signatory State or to any authorized representative of the United States, upon request, any information within its possession;

(g) Not incur any obligation in excess of the unencumbered balance of its funds, nor pledge the credit of any of the Signatory States; and

(h) Make available to a Signatory State or the United States in any action arising under this Compact; [sic] without subpena, the testimony of any officer or employee of the Commission having knowledge of any relevant facts.

ARTICLE XI

POLLUTION

Section 11.01. The Signatory States recognize that the increase in population and the growth of industrial, agricultural, mining and other activities combined with natural pollution sources may lead to a diminution of the quality of water in the Red River Basin which may render the water harmful or injurious to the health and welfare of the people and impair the usefulness or public enjoyment of the water for beneficial purposes, thereby resulting in adverse social, economic, and environmental impacts.

Section 11.02. Although affirming the primary duty and responsibility of each Signatory State to take appropriate action under its own laws to prevent, diminish, and regulate all pollution sources within its boundaries

which adversely affect the water of the Red River Basin, the states recognize that the control and abatement of the naturally occurring salinity sources as well as, under certain circumstances, the maintenance and enhancement of the quality of water in the Red River Basin may require the cooperative action of all states.

Section 11.03. The Signatory States agree to cooperate with agencies of the United States to devise and effectuate means of alleviating the natural deterioration of the water of the Red River Basin.

Section 11.04. The Commission shall have the power to cooperate with the United States, the Signatory States and other entities in programs for abating and controlling pollution and natural deterioration of the water of the Red River Basin, and to recommend reasonable water quality objectives to the states.

Section 11.05. Each Signatory State agrees to maintain current records of waste discharges into the Red River Basin and the type and quality of such discharges, which records shall be furnished to the Commission upon request.

Section 11.06. Upon receipt of a complaint from the Governor of a Signatory State that the interstate water of the Red River Basin in which it has an interest are being materially and adversely affected by pollution and that the state in which the pollution originates has failed after reasonable notice to take appropriate abatement measures, the Commission shall make such findings as are appropriate and thereafter provide such findings to the Governor of the state in which such pollution originates and request appropriate corrective action. The Commission, however, shall not take any action with respect to pollution which adversely affects only the state in which such pollution originates.

Section 11.07. In addition to its other powers set forth under this Article, the Commission shall have the authority, upon receipt of six concurring votes, to utilize applicable Federal statutes to institute legal action in its own name against the person or entity responsible for interstate pollution problems; provided, however, sixty (60) days before initiating legal action the Commission shall notify the Governor of the state in which the pollution source is located to allow that state an opportunity to initiate action in its own name.

Section 11.08. Without predjudice to any other remedy available to the Commission, or any Signatory State, any state which is materially and adversely affected by the pollution of the water of the Red River Basin by pollution originating in another Signatory State may institute a suit against any individual, corporation, partnership, or association, or against any Signatory State or political or governmental subdivision thereof, or against any officer, agency, department, bureau, district or instrumentality of or in any Signatory State contributing to such pollution in accordance with applicable Federal statutes. Nothing herein shall be construed as depriving any persons of any rights of action relating to pollution which such person would have if this Compact had not been made.

ARTICLE XII

TERMINATION AND AMENDMENT OF COMPACT

Section 12.01. This Compact may be terminated at any time by appropriate action of the legislatures of all of the four Signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

Section 12.02. This Compact may be amended at any time by appropriate action of the legislatures of all Signatory States that are affected by such amendment. The consent of the United States Congress must be obtained before any such amendment is effective.

ARTICLE XIII

RATIFICATION AND EFFECTIVE DATE OF COMPACT

Section 13.01. Notice of ratification of this Compact by the legislature of each Signatory State shall be given by the governor thereof to the governors of each of the other Signatory States and to the President of the United States. The President is hereby requested to give notice to the governors of each of the Signatory States of the consent of this Compact by the Congress of the United States.

Section 13.02. This Compact shall become effective, binding and obligatory when, and only when:

(a) It has been duly ratified by each of the Signatory States; and

(b) It has been consented to by an Act of the Congress of the United States,

which act provides that:

Any other statute of the United States to the contrary notwithstanding, in any case or controversy:

> which involves the construction or application of this Compact; in which one or more of the Signatory States to this Compact is a plaintiff or plaintiffs; and which is within the judicial power of the United States as set forth in the Constitution of the United States;

and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy:

> The consent of Congress is given to name and join the United States as a party defendant or otherwise in any such case or controversy in the Supreme Court of the United States if the United States is an indispensable party thereto.

Section 13.03. The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between

Signatory States; and that the venue of such case or controversy may be brought in any judicial district in which the acts complained of (or any portion thereof) occur.

SIGNED AND APPROVED on the 12th day of May, 1978 at Denison Dam.

FOR ARKANSAS:
JOHN P. SAXTON
Commissioner

FOR LOUISIANA
ARTHUR R. THEIS
Commissioner

FOR OKLAHOMA:
ORVILLE B. SAUNDERS
Commissioner

FOR TEXAS:
FRED PARKEY
Commissioner

FOR UNITED STATES OF AMERICA;
R.C. MARSHALL, Major General
Representative

Section 2. [Consent of Congress to joinder of United States in Federal court case involving Compact if indispensable party.]—In order to carry out the purposes of this Act, and the purposes of article XIII of this compact consented to by Congress by this Act, the congressional consent to this compact includes and expressly gives the consent of Congress to have the United States of America named and joined as a party defendant or otherwise in the United States Supreme Court or in a district court with concurrent jurisdiction in matters in which the Supreme Court has original jurisdiction, in any case or controversy involving the construction or application to this Compact in which one or more of the Signatory States to this Compact is a plaintiff, and which is within the judicial power of the United States as set forth in the Constitution of the United States, if the United States of America is an indispensable party and without any requirement, limitation or regard as to the sum or value of the matter in controversy, or of the place of residence or citizenship of, or of the nature, character or legal status of, any of the other proper parties plaintiff or defendant in such case or controversy. (94 Stat. 3320)

Section 3. [Reservation of right to alter, amend, or repeal Compact.]—The right to alter, amend, or repeal this Act is expressly reserved. (94 Stat. 3320)

Section 4. [Jurisdiction of United States District Courts in cases involving Compact.]—The United States District Courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States, and concurrent with that of any other Federal or state court, in matters in which the Supreme Court, or other court has original jurisdiction) of any case or controversy involving the application or construction of this Compact; that said jurisdiction shall include, but not be limited to, suits between Signatory States; and that the venue of such case or controversy may be in any judicial district in which the acts complained of (or any portion thereof) occur. (94 Stat. 3320)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2227, Public Law 96-564 in the 96th Congress. Reported in Senate from Judiciary; S. Rept. No. 964. Passed Senate September 24, 1980. Passed House, amended, December 1, 1980, in lieu of H.R. 7206, already passed. Senate agreed to House amendment, December 12, 1980.

EXTENSION OF SERVICE AREA, SACRAMENTO VALLEY CANALS

An act to extend the service area for the Sacramento Valley Canals, Central Valley project, California, and for other purposes. (Act of December 22, 1980, Public Law 96-570, 94 Stat. 3339)

[Sec. 1. Tehama-Colusa Canal—Authorized service area—Existing contracts with Colusa County and Dunnigan Water districts validated.]—The features authorized under section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended, and generally consisting of the Tehama-Colusa Canal with all necessary pumping plants and appurtenances, were intended to serve and were thereby authorized to serve those lands in Yolo County, California, lying within the boundaries of the Colusa County and Dunnigan water districts and existing contracts between the Secretary of the Interior and the Colusa County and Dunnigan water districts are hereby validated by the Congress with respect to the inclusion of said districts in the authorized service area of the Tehama-Colusa Canal. (94 Stat. 3339)

Sec. 2. [Amendments to Section 2 of Act of September 26, 1950.]—Section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended, is further amended by striking the phrase "Tehama, Glenn, and Colusa Counties or" and inserting in lieu thereof the phrase "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or". (94 Stat. 3339)

Sec. 3. [Repayment provisions for future water service contracts with the Yolo-Zamora Water District—Reduced supply for salinity control in dry years—No project water for class 4 and 6 lands not previously cultivated.]—Any water service contract hereinafter entered into by the Secretary of the Interior with the Yolo-Zamora Water District shall contain provisions establishing—

(a) that water users shall pay for such water at a rate equivalent to the cost of service to the Yolo-Zamora Water District or the district's repayment capacity, whichever is less, but in no case less than the annual operations, maintenance, and replacement costs allocable to the district for service of Central Valley project water, all as determined by the Secretary of the Interior in conformance with reclamation law and in consultation with the district: *Provided,* That the district's repayment capacity and the operations, maintenance, and replacement costs shall be recalculated and revised no less frequently than every five years and the water rates adjusted as appropriate to reflect such revisions;

(b) That any water supply contract between the Secretary and the Yolo-Zamora Water District shall provide that in the event of a dry or critically dry year the water supply provided to the Yolo-Zamora Water District

may be reduced by the Secretary for salinity control purposes consistent with administrative and operations practices of the Central Valley project; and

(c) that the lands in the Yolo-Zamora Water District which are classified as class 4 and 6 pursuant to the Secretary of the Interior's classification standards for irrigable lands and which have not previously been under active cultivation shall not be irrigated with project water. (94 Stat. 3339)

Sec. 4. [Excess land laws not applicable to lands within the Imperial Irrigation District of California.]—The following provisions of the Federal reclamation laws shall not apply to lands within the Imperial Irrigation District of California after the date of enactment of this Act:

(a) section 5 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 17, 1902 (43 U.S.C. 431);

(b) section 46 of the 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 (42 U.S.C. 423e); and

(c) any other provision of law amendatory or supplementary to either of such sections. (94 Stat. 3340)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

References in the Text. Section 1 of the Act of September 26, 1950 64 Stat. 1036 reauthorized the entire Central Valley Project, California. Section 2, referred to in sections 1 and 2 of the text, authorized the Tehama-Colusa Conduit and Chico Canal as features thereof. The 1950 Act appears in Volume II at page 1032. The Act of June 17, 1902, referred to in section 4 of the text, is the Reclamation Act of 1902. Section 5 thereof appears in Volume I at page 62. The Act of May 25, 1926, also referred to in section 4 of the text, is the Omnibus Adjustment Act of 1926. Section 46 thereof appears in Volume I at page 376.

Editor's Note, Annotations. Annotations of an opinion interpreting the Act of September 26, 1950 (64 Stat. 1036), referred to in section 2 of the text, are found in Supplement I under "September 26, 1950—Sacramento Valley Canals."

Legislative History. H.R. 2111, Public Law 96-570 in the 96th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 96-600. Passed House November 27, 1980. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-907. Passed Senate, amended, September 4, 1980. House concurs in Senate amendment, with an amendment, November 21, 1980. Senate agrees to House amendment, with an amendment, December 12, 1980. House agrees to Senate amendment December 13, 1980.

ALASKA FEDERAL-CIVILIAN ENERGY EFFICIENCY SWAP ACT OF 1980

An act to provide certain authority for the purchase and sale of electric energy by Federal departments in Alaska, and for other purposes. (Act of December 22, 1980, Public Law 96-571, 94 Stat. 3341)

SHORT TITLE

Section 1. This Act shall be referred to as the "Alaska Federal-Civilian Energy Efficiency Swap Act of 1980". (94 Stat. 3341; 40 U.S.C. § 795 note)

DEFINITIONS

Sec. 2. As used in this Act—

(1) The term "non-Federal electric energy" means electric energy generated by any facility other than a federally owned electric generating facility.

(2) The term "agency" means the head of any department, agency, or instrumentality of the United States.

(3) The term "federally generated electric energy" means any electric power generated by an electric generating facility owned and operated by an agency.

(4) The term "non-Federal person" means any corporation, cooperative, municipality, or other non-Federal entity which generates non-Federal electric energy. (94 Stat. 3341; 40 U.S.C. § 795)

AUTHORITY TO SELL CERTAIN ELECTRIC ENERGY

Sec. 3. (a) For the purposes of conserving oil and natural gas and better utilizing coal, any agency is authorized to sell to any non-Federal person, and to enter into contracts for the sale to any non-Federal person of, electric energy generated by coal-fired electric generating facilities of such agency in Alaska without regard to any provision of law which precludes such sale where such energy is available from other local sources, if the agency determines that—

(1) such energy is generated by an existing coal-fired generating facility;

(2) such energy is surplus to such agency's needs and is in excess of the electric energy specifically generated for consumption by, or necessary to serve the requirements of, any department, agency, or instrumentality of the United States;

(3) the costs to the ultimate consumers of such energy is less than the costs which, in the absence of such sale, would be incurred by such consumers for the purchase of an equivalent amount of energy; and

(4) such sale will result in a reduction in the total consumption of oil or natural gas by the non-Federal person purchasing such electric energy below that consumption which would occur in the absence of such sale.

(b) Federally generated electric energy sold by an agency as provided in subsection (a) shall be priced to recover the fuel costs and variable operation and maintenance costs of the Federal generating facility concerned which costs are attributable to such sale, plus an amount equal to one-half the difference between—

(1) the costs of producing the electric energy by coal generation, and

(2) the costs of producing electric energy by the oil or gas generation being displaced. (94 Stat. 3341; 40 U.S.C. § 795a)

EXPLANATORY NOTE

Reference in the Text. The reference in section 3(a) to "any provision of law which precludes such sale" is a reference to 10 U.S.C. § 2481, which authorizes the Secretary of Defense to sell electric power if it is "not available from another local source." This provision does not appear herein.

PURCHASE AUTHORITY

Sec. 4. For purposes of economy and efficiency and conserving oil and natural gas, whenever practicable and consistent with other laws applicable to any agency and whenever consistent with the requirements applicable to any agency, such agency shall endeavor to purchase electric power from any non-Federal person for consumption in Alaska by any facility of such agency where such purchase—

(1) will result in a savings to other consumers of electric energy sold by such non-Federal person without increasing the cost incurred by any agency for electric energy, or

(2) will result in a cost savings to such agency of electric energy without increasing costs to other consumers of electric energy,

taking into account the remaining useful life of any facility available to such agency to generate electric energy for such agency and the cost of maintaining such facility on a standby basis. (94 Stat. 3341; 40 U.S.C. § 795b)

SAVINGS PROVISIONS

Sec. 5. (a) Nothing in this Act shall be construed as requiring or authorizing any department, agency, or instrumentality of the United States to construct any new electric generating facility or related facility, to modify any existing facility, or to employ reserve or standby equipment in order to accommodate the needs of any non-Federal person for electric energy.

(b) Revenues received by any agency pursuant to section 3 of this Act from the sale of electric energy generated from any facility of such agency shall be available to the agency without fiscal year limitation for the purchase of fuel and for operation, maintenance, and other costs associated with such facility.

(c) The authorities of this Act shall be exercised for such periods and pursuant to such terms and conditions as the agency concerned deems necessary consistent with the provisions of this Act and consistent with its responsibilities under other provisions of law.

(d) All contracts or other agreements executed under this Act, notwithstanding any other provision of law, shall be negotiated and executed by the agency selling or purchasing electric energy under this Act. (94 Stat. 3342; 40 U.S.C. § 795c)

REPORTS

Sec. 6. (a) The Secretary of Energy shall biennially report to the Senate Committee on Energy and Natural Resources and the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives on the actions taken pursuant to this Act by any agency. The report shall include an analysis of the costs of electric energy purchased or sold as provided in this Act, the revenues and profits generated from such sales, and the oil and natural gas conserved as a result of any such purchases and sales. Such agencies shall cooperate with the Secretary of Energy in providing information for the purpose of such report.

(b) The Secretary of Energy shall conduct a study to determine whether and to what extent the provisions of section 3 of this Act should be extended to apply to electric power generated by coal-fired Federal electric generating facilities located in the United States outside of Alaska. The study shall identify such facilities, their capacity and purpose and other pertinent information. The Secretary shall provide by October 1, 1981, a report of such study, together with appropriate recommendations for legislation, to the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. (94 Stat. 3342; 40 U.S.C. § 795d)

EXPLANATORY NOTE

Legislative History. S. 1784, Public Law 96-571 in the 96th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 96-966. Passed Senate September 25, 1980. Passed House, amended, December 5, 1980. Senate agrees to House amendments December 12, 1980.

AMEND PALO VERDE DIVERSION DAM ACT

An act to authorize the generation of electrical power at Palo Verde Irrigation District Diversion Dam, California. (Act of August 14, 1981, Public Law 97–41, 95 Stat. 945).

[Sec. 1. Palo Verde Irrigation District granted right to install powerplant at diversion dam under license from Federal Energy Regulatory Commission.]—The Act of August 31, 1954 (68 Stat. 1045) is amended by striking subsection 2(c) and inserting in lieu thereof the following:

"(c) to accept title to said dam, appurtenant works, lands, and interests in land upon payment by the district (which payment shall be made over a period of not more than fifty years) of the sum of $1,175,000, and upon repayment of any loan made pursuant to section 4, clause (c), of this Act;

"(d) notwithstanding any provision of the Federal Power Act (16 U.S.C. 792 et seq.), to the contrary, the Palo Verde Irrigation District, California, shall have the exclusive right to utilize said dam, appurtenant works, lands, and interests in land for the development, generation, transmission, and disposal of electric power and energy pursuant to a license from the Federal Energy Regulatory Commission under part I of the Federal Power Act: *Provided*, That if the Palo Verde Irrigation District, California, after the date of enactment of this subsection shall notify the Secretary of the Interior that it relinquishes the right granted in this subsection there shall be and is hereby reserved to the United States or there shall be made available to it, as the case may require, the exclusive right to utilize, without cost to it, said dam, appurtenant works, lands, and interests in land for such development, generation, and transmission of electric power and energy as may hereafter be authorized by law: *Provided further*, That in the event it becomes practicable for the United States to develop hydroelectric energy at this site, the division of such energy between the United States and the district shall be a matter of negotiation prior to construction of any powerplant.". (95 Stat. 945)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 875, Public Law 97–41 in the 97th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97–60. Passed Senate May 14, 1981. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 97–209. Passed House August 4, 1981.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1982

[Extracts from] An act making appropriations for energy and water development for the fiscal year ending September 30, 1982, and for other purposes. (Act of December 4, 1981, Public Law 97–88, 95 Stat. 1135)

* * * * *

TITLE II—DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

* * * * *

GENERAL INVESTIGATIONS

* * * * *

[Farmers Irrigation District rehabilitation program.]—*Provided*, That of the amount herein appropriated not to exceed $50,000 shall be available to initiate a rehabilitation and betterment program with the Farmers Irrigation District to rehabilitate facilities under the Act of October 7, 1949 (63 Stat. 724), as amended, to be repaid in full by the lands served and under conditions satisfactory to the Secretary of the Interior. (95 Stat. 1138)

EXPLANATORY NOTE

Reference in the Text. The Act of October 7, 1949, referred to in the text, is the Rehabilitation and Betterment Act. The 1949 Act appears in Volume II at page 969.

* * * * *

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

* * * * *

Sec. 205. [McGee Creek project—Acquisition of surface or mineral estates.]—Appropriations in this title shall be available for acquisition of land for the McGee Creek project, Oklahoma: *Provided*, That land required for the dam, dike, and any other authorized permanent features shall be acquired in fee title (surface and minerals): *Provided further*, That mineral and subsurface interests shall be acquired by subordination in the conservation pool area of the reservoir, natural scenic recreation area, and the wildlife management area in such a manner as to allow the present mineral owners, their successors and assignees the right to explore for and extract

minerals under restrictions required to protect the project: *Provided further*, That only the surface estate be acquired for any other lands required for the McGee Creek project. (95 Stat. 1141)

* * * * *

TITLE III—DEPARTMENT OF ENERGY

OPERATING EXPENSES

ENERGY SUPPLY, RESEARCH AND DEVELOPMENT ACTIVITIES

* * * * *

[Funds for wood-derived fuels program transferred to the Bonneville Power Administration.]—*Provided further*, That $1,300,000 of the funds provided herein shall be for the Region X wood-derived fuels program and transferred to the Bonneville Power Administration for obligation and expenditure. (95 Stat. 1142)

* * * * *

POWER MARKETING ADMINISTRATIONS

* * * * *

BONNEVILLE POWER ADMINISTRATION FUND

[Transmission facilities approved.]—Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, are approved * * * for construction of Surprise Valley Area Service in the Alturas-Cedarville, California area * * * (95 Stat. 1144)

EXPLANATORY NOTE

Reference in the Text. Public Law 93-454, referred to in the text, is the Federal Columbia River Transmission System Act (Act of October 18, 1974, 88 Stat. 1376). The 1974 Act appears in Volume IV in chronological order.

[Short title.]—This Act may be cited as the "Energy and Water Development Appropriation Act, 1982". (95 Stat. 1149)

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted 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. 4144, Public Law No. 97–88 in the 97th Congress. H.R. Rept. No. 97–177. S. Rept. No. 97–256. H.R. Report No. 97–345 (conference report).

SAN JUAN-CHAMA PROJECT WATER

[Extracts from] An act to authorize the Secretary of the Army to contract with the Tarrant County Water Control and Improvement District Numbered 1 and the city of Weatherford, Texas, for the use of water supply storage in Benbrook Lake, and for other purposes. (Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717)

* * * * *

Sec. 5. [Storage of San Juan-Chama project water—Secretary of the Army authorized to enter into agreements for storage in Abiquiu Reservoir—Users to pay increase in O&M costs—Secretary of Interior authorized to enter into agreements for storage in Elephant Butte Reservoir—Proportional payment for increase in O&M costs not offset by power revenues—Evaporation and spill losses accounted for as required by Rio Grande Compact.]—(a) The proviso of section 2 of Public Law 84-485 shall not be construed to prohibit the storage of San Juan-Chama project water acquired by contract with the Secretary of the Interior pursuant to Public Law 87–483 in any reservoir, including the storage of water for recreation and other beneficial purposes by any party contracting with the Secretary for project water.

(b) The Secretary of the Army, acting through the Chief of Engineers, is authorized to enter into agreements with entities which have contracted with the Secretary of the Interior for water from the San Juan-Chama project pursuant to Public Law 87–483 for storage of a total of two hundred thousand acre-feet of such water in Abiquiu Reservoir. The Secretary of the Interior is hereby authorized to release San Juan-Chama project water to contracting entities for such storage. The agreements to thus store San Juan-Chama project water shall not interfere with the authorized purposes of the Abiquiu Dam and Reservoir project and shall include a requirement that each user of storage space shall pay any increase in operation and maintenance costs attributable to the storage of that user's water.

(c) The Secretary of the Interior is authorized to enter into agreements with entities which have contracted with the Secretary of the Interior for water from the San Juan-Chama project pursuant to Public Law 87–483 for storage of such water in Elephant Butte Reservoir. The Secretary of the Interior is hereby authorized to release San Juan-Chama project water to contracting entities for such storage. Any increase in operation and maintenance costs resulting from such storage not offset by increased power revenues resulting from that storage shall be paid proportionately by the entities for which the San Juan-Chama project water is stored.

(d) The amount of evaporation loss and spill chargeable to San Juan-Chama project water stored pursuant to subsections (b) and (c) of this section shall be accounted as required by the Rio Grande compact and the procedures established by the Rio Grande Compact Commission. (95 Stat. 1717)

EXPLANATORY NOTE

References in the Text. Public Law 84–485 (Act of April 11, 1956, 70 Stat. 105), referred to in the text, authorized construction of the Colorado River Storage Project. The 1956 Act appears in Volume II at page 1248. The proviso of section 2 thereof provides that, with reference to the plans and specifications for the San Juan-Chama Project, the storage for control and regulation of water imported from the San Juan River shall (1) be limited to a single offstream dam and reservoir on a tributary of the Chama River, (2) be used solely for control and regulation and no power facilities shall be established, installed or operated thereat, and (3) be operated at all times by the Bureau of Reclamation in strict compliance with the Rio Grande Compact. Public Law 87–483 (Act of June 13, 1962, 76 Stat. 96), also referred to in the text, authorized construction of the Navajo Indian Irrigation Project and the Initial Stage of the San Juan-Chama Project as participating projects of the Colorado River Storage Project. The 1962 Act appears in Volume III at page 1658.

Sec. 6. [Removal of property from reservoirs and lakes administered by Corps of Engineers.]—Notwithstanding any other provision of law, no houseboat, floating cabin, marina (including any with sleeping facilities), or lawfully installed dock or cabin and appurtenant structures shall be required to be removed before December 31, 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on the date of enactment of this Act, if such property is maintained in usable condition; and, in the judgment of the Chief of Engineers, does not occasion a threat to life or property. (95 Stat. 1718; 16 U.S.C. § 460d note)

EXPLANATORY NOTE

Legislative History. H.R. 779, Public Law 97–140 in the 97th Congress. Reported in House from Public Works and Transportation; H.R. Rept. No. 97–95. Passed House June 1, 1981. Passed Senate, amended, December 16, 1981. House concurs in Senate amendment December 16, 1981.

SOUTH DAKOTA PROJECTS; PICK-SLOAN PUMPING POWER

An act to authorize the Secretary of the Interior to proceed with development of the WEB pipeline, to provide for the study of South Dakota water projects to be developed in lieu of the Oahe and Pollock-Herreid irrigation projects, and to make available Missouri basin pumping power to projects authorized by the Flood Control Act of 1944 to receive such power. (Act of September 30, 1982, Public Law 97-273, 96 Stat. 1181)

[Sec. 1. Secretary authorized to proceed with WEB Rural Water Development Project.]—The WEB Rural Water Development Project, authorized by section 9 of the Rural Development Policy Act of 1980 (94 Stat. 1175), is reauthorized subject to the provisions of section 9 of that Act, as amended by section 2 of this Act. The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to proceed with the development of the WEB Rural Water Development Project, consistent with the terms and conditions of section 9(e) of that Act, as amended by section 2 of this Act, and to make available for immediate obligation any funds appropriated for such project for fiscal year 1981. (96 Stat. 1181)

Sec. 2. [Amendments to Rural Development Policy Act of 1980.]—Section 9 of the Rural Development Policy Act of 1980 is amended by—

(a) striking out in subsection (b) all after "the types of construction involved herein" and inserting a period in lieu thereof;

(b) striking out the first sentence of subsection (d); and

(c) striking out the first sentence of subsection (e) and inserting in lieu thereof the following: "The Secretary of the Interior shall use funds appropriated under this Act to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act, except to the extent such Act or rules or regulations promulgated thereunder are inconsistent with the provisions of this section.". (96 Stat. 1181)

EXPLANATORY NOTE

Reference in the Text. The Rural Development Policy Act of 1980 is the Act of September 24, 1980 (Public Law 96-355, 94 Stat. 1171). Section 9 of the 1980 Act, referred to in section 1 of the text and amended by section 2 of the text, appears in Volume IV in chronological order.

Sec. 3. [Feasibility studies authorized—Report to Congress required—Secretary authorized to contract with South Dakota to carry out studies.]—(a) The Secretary is authorized, in cooperation with the State of South Dakota, to conduct feasibility investigations of the following proposed water resource developments:

(1) alternate uses of facilities constructed for use in conjunction with the Oahe unit, initial stage, James division, Pick-Sloan Missouri basin program, South Dakota;

(2) future uses in South Dakota of water delivered by the Garrison unit, Pick-Sloan Missouri basin program, North Dakota; and

(3) a reformulated plan for the development of the Pollock-Herreid unit, South Dakota pumping division, Pick-Sloan Missouri basin program, South Dakota, including irrigation of alternative lands or reduced acreages.

(b) The Secretary shall report to Congress the findings of the studies authorized by this section along with his recommendations.

(c) The Secretary may contract with the State to carry out the studies authorized by this section. (96 Stat. 1182)

Sec. 4. [Secretary authorized to cancel Oahe unit contracts—No construction of certain Oahe unit features without further Congressional action.]—(a) The Secretary is authorized to cancel the master contract and participating and security contracts for the Oahe unit, initial Stage: *Provided*, That such actions shall be done with the agreement of the Oahe Conservancy Subdistrict and the Spink and West Brown irrigation districts: *Provided further*, That any repayment obligation existing at the time of cancellation of the master and participating and security contracts shall thereafter be treated as a deferred cost of the Pick-Sloan Missouri basin program: *Provided, however*, That such costs shall be assumed and repaid by the beneficiaries of any future project which utilizes the Oahe unit facilities. Such repayment obligation and manner of repayment shall be determined pursuant to the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371).

(b) Those features of the authorized plan of development for the Oahe unit, initial stage, which were designed for and could be used only to deliver irrigation water to the Spink and West Brown irrigation districts namely: Faulkton, Cresbard, West Main, Redfield, James, and East canals; Cresbard and Byron dams and reservoirs; James and Byron pumping plants; and associated features; shall not be constructed by the Secretary without further action by the Congress, but nothing in this Act shall be deemed to limit the authority of the Secretary to recommend development of other features based upon any study authorized by section 3(a)(1) of this Act. (96 Stat. 1182)

Sec. 5. [Secretary authorized to make available Pick-Sloan Missouri basin program pumping power.]—The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri basin program pumping power to the Crow Creek, Cheyenne River, Omaha and Standing Rock Indian Reservation irrigation developments, and the Grass Rope Unit, Pick-Sloan Missouri basin program. Such pumping power shall also be made available to such additional irrigation projects as may be subsequently authorized to receive such power by Act of Congress. (96 Stat. 1182)

Sec. 6. [Authorization of appropriations.]—There is hereby authorized to be appropriated beginning October 1, 1982, such funds as may be necessary to carry out the provisions of this Act. (96 Stat. 1182)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 4347, Public Law 97–273 in the 97th Congress. Reported in House from Interior and Insular Affairs and Agriculture; H.R. Rept. No. 97–524. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97–514. Passed House June 8, 1982. Passed Senate, amended, August 19, 1982. House concurs in Senate amendment September 23, 1982.

AMEND EMERGENCY FUND ACT

An act to amend the Emergency Fund Act (Act of June 26, 1948, 62 Stat. 1052). (Act of October 1, 1982, Public Law 97-275, 96 Stat. 1185)

[Amendment to make Act apply to all projects and project facilities governed by Reclamation law.]—The Act entitled "An Act to authorize an emergency fund for the Bureau of Reclamation to assure the continuous operation of its irrigation and power systems", approved June 26, 1948, is amended by striking the words "irrigation and power systems" in the title and substituting the words "project facilities" and by changing the first sentence of section 1 of the Act to read as follows: "In order to assure continuous operation of all projects and project facilities governed by the Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), including any project and facilities constructed with funds provided by the Small Reclamation Projects Act (Act of August 6, 1956, 70 Stat. 1044, and Acts amendatory thereof or supplementary thereto) or with funds provided by the Distribution System Loans Act (Act of May 14, 1956, 69 Stat. 244, and Acts amendatory thereof or supplementary thereto), there is hereby authorized to be appropriated from the reclamation fund an emergency fund which shall be available for defraying expenses which the Commissioner of Reclamation determines are required to be incurred because of unusual or emergency conditions.". (96 Stat. 1185; 43 U.S.C. § 502)

Explanatory Notes

References in the Text. The Small Reclamation Projects Act (Act of August 6, 1956, 70 Stat. 1044), referred to in the text, appears in Volume II at page 1331. The Distribution System Loans Act (69 Stat. 244), originally enacted on July 4, 1955, not May 14, 1956, appears in Volume II at page 1218. The May 14, 1956 amendment to the 1955 Act, referred to in the text, appears in Volume II at page 1264.

Editor's Note, Annotations. Annotations of opinions are found in Volume II at page 891 and in Supplement I under "June 26, 1948—Emergency Fund."

Legislative History. S. 1628, Public Law 97-275 in the 97th Congress. Reported in Senate from Energy and Natural Resources April 27, 1982; S. Rept. No. 97-363. Passed Senate May 10, 1982. Reported in House from Interior and Insular Affairs August 19, 1982; H.R. Rept. No. 97-769. Passed House September 20, 1982.

CONTINUING APPROPRIATIONS ACT, 1983

[Extracts from] A joint resolution making continuing appropriations for the fiscal year 1983, and for other purposes. (Act of October 2, 1982, Public Law 97–276, 96 Stat. 1186)

* * * * *

Sec. 102. [Termination of funds availability and authority.]—Appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1982, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriation Act by both Houses without any provision for such project or activity, or (c) December 17, 1982, whichever first occurs. (96 Stat. 1190)

* * * * *

Sec. 166. [Market-based pricing studies for hydroelectric power prohibited.]—None of the funds appropriated under this joint resolution or any other provisions of law shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required "at cost" to a "market rate" method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government. (96 Stat. 1204)

Explanatory Notes

Background. Section 166 was adopted in response to information that a working group of the Cabinet Council on Natural Resources headed by William Niskanen, a member of the Council of Economic Advisers, was studying the possibility of instituting market-based pricing for Federal power. It was added in the Senate on September 29, 1982 on an amendment offered by Senator James A. McClure of Idaho, and is sometimes referred to as the McClure Amendment.

Provision Repeated. A similar provision is contained in section 114 of the Further Continuing Appropriations Act, 1983, (Act of December 21, 1982, Public Law 97–377, 96 Stat. 1912), which appears in Volume IV in chronological order.

Not Codified. The extracts from this Act reprinted here are not codified in the U.S. Code.

Legislative History. H.J. Res. 599, Public Law 97–276 in the 97th Congress. H.R. Rept. No. 97–834. S. Rept. No. 97–581. H.R. Rept. No. 97–914 (conference report).

BUFFALO BILL DAM AND RESERVOIR MODIFICATIONS RECLAMATION REFORM ACT OF 1982 SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982

An act to authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes. (Act of October 12, 1982, Public Law 97–293, 96 Stat. 1261)

TITLE I

Sec. 101. [Buffalo Bill Dam and Reservoir modifications, Shoshone Project, Wyoming—Authorized as part of Pick-Sloan Missouri Basin program—Powerplant not to affect releases to satisfy existing water rights or contracts.]—The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is hereby authorized to construct, operate, and maintain modifications to the Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, for the purposes of providing approximately seventy-four thousand acre-feet of additional water annually for irrigation, municipal and industrial use, increased hydroelectric power generation, outdoor recreation, fish and wildlife conservation and development, environmental quality, and other purposes. The principal modifications to the Buffalo Bill Dam and Reservoir shall include raising the height of the existing Buffalo Bill Dam by twenty-five feet, enlarging the capacity of the existing Buffalo Bill Reservoir by approximately two hundred and seventy-one thousand acre-feet, replacing the existing Shoshone Powerplant, enlarging a spillway, construction of a visitor's center, dikes and impoundments, and necessary facilities to effect the aforesaid purposes of the modifications. These modifications are hereby authorized as part of the Pick-Sloan Missouri Basin program: *Provided*, That the powerplant authorized by this section shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment, or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract. (96 Stat. 1261)

Sec. 102. [Fish and wildlife and recreation development.]—The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the modification of Buffalo Bill Dam and Reservoir shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended. (96 Stat. 1261)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public Law 89–72), referred to in the text, appears in Volume III at page 1820.

Sec. 103. [Modifications shall be integrated physically and financially with other Pick-Sloan Missouri Basin program works—Repayment contracts prerequisite to construction of M&I facilities—Environmental quality costs nonreimbursable.]—The modifications of the Buffalo Bill Dam and Reservoir shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Revenues for the return of costs allocated to power shall be determined by power rate and repayment analysis of the Pick-Sloan Missouri Basin program. Repayment contracts for the return of costs allocated to municipal and industrial water and irrigation water supplies exclusive of State participation pursuant to section 107 shall be negotiated under provisions of the Reclamation Project Act of 1939 (53 Stat. 1198) or the Water Supply Act of 1958 (72 Stat. 320), as amended, and shall be prerequisite to the initiation of construction of facilities for this purpose. Costs allocated to environmental quality shall be nonreimbursable and nonreturnable under Federal reclamation law. (96 Stat. 1261)

EXPLANATORY NOTE

References in the Text. The Flood Control Act of 1944 (Act of December 22, 1944), the Reclamation Project Act of 1939 (Act of August 4, 1939), and the Water Supply Act of 1958 (Act of July 3, 1958), referred to in the text, appear in Volume II (page 796), Volume I (page 634), and Volume II (page 1426), respectively.

Sec. 104. [Hydroelectric power to be marketed by Secretary of Energy—Transmission interconnections authorized.]—(a) The Secretary of Energy is authorized to construct, operate, and maintain transmission interconnections as required physically to interconnect the hydroelectric powerplant authorized by this title to existing power systems as he determines necessary to accomplish distribution and marketing of the power generated.

(b) Hydroelectric power generated by the facility constructed pursuant to this title shall be delivered to the Secretary of Energy for distribution and marketing. Such facility shall be financially integrated with the Western Division, Pick-Sloan Missouri Basin program power system and the power marketed under rate schedules in effect for such system. (96 Stat. 1262)

Sec. 105. [Interest rate.]—The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Buffalo Bill Dam and Reservoir modifications shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the unit is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from date of issue. (96 Stat. 1262)

Sec. 106. [Authorization for appropriations.]—(a) There is hereby authorized to be appropriated beginning October 1, 1982, for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels) plus or minus such amounts, if

any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation, maintenance, and replacement of the works of said modifications: *Provided*, That, such sums authorized to be appropriated for construction, operation, maintenance, and replacement shall be reduced by the amounts contributed to the project under the provisions of section 107 of this title.

(b) There is also authorized to be appropriated beginning October 1, 1982, such sums as may be required by the Secretary of Energy to accomplish interconnection of the powerplant authorized by this title, together with such sums as may be required for operation and maintenance of the works authorized by section 104(a). (96 Stat. 1261)

Sec. 107. [Contracts with State authorized.]—The Secretary of the Interior is authorized to enter into contracts with the State of Wyoming, upon such terms and conditions as he deems necessary, for the division of additional water impounded by the modifications, the sharing of revenues from the modifications, and the sharing of the costs of construction, operation, maintenance, and replacement of the Buffalo Bill Dam and Reservoir modifications. (96 Stat. 1263)

EXPLANATORY NOTE

Not Codified. Title I of this Act is not codified in the U.S. Code.

TITLE II

Editor's Note: The Department of the Interior is also publishing as a separate volume a compilation of regulations, opinions, decisions and memoranda issued through mid-1988 dealing with the Reclamation Reform Act, as amended.

Sec. 201. [Amendment and supplement to "Federal reclamation law"—Short Title.]—This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371), hereinafter referred to as "Federal reclamation law". This title may be referred to as the "Reclamation Reform Act of 1982". (96 Stat. 1263; 43 U.S.C. § 390aa)

Sec. 202. [Definitions: "contract"; "district"; "full cost"; "individual"; "irrigation water"; "landholding"; "limited recipient"; "project"; "qualified recipient"; "recordable contract"—Interest rates—Operation, maintenance and replacement costs shall be collected.]—As used in this title:

(1) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal reclamation law.

(2) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

(3)(A) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment of this Act: *Provided*, That operation, maintenance, and replacement charges required under Federal reclamation law, including this title, shall be collected in addition to the full cost charge.

(B) The interest rate used for expenditures made on or before the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing, marketable issues sold by the Treasury during the fiscal year in which the expenditures by the United States were made, but shall not be less than 7½ per centum per annum.

(C) The interest rate used for expenditures made after the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of—

(i) the rate as of the beginning of the fiscal year in which expenditures are made on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(ii) the weighted average yield on all interest-bearing, marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(4) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. 152).

(5) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(6) The term "landholding" means total irrigable acreage of one or more tracts of land situated in one or more districts owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(7) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than twenty-five natural persons.

(8) The term "project" means any reclamation or irrigation project, including incidental features thereof, authorized by Federal reclamation

law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(9) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits twenty-five natural persons or less.

(10) The term "recordable contract" means a contract between the Secretary and a landowner in writing capable of being recorded under State law providing for the sale or disposition of lands held in excess of the ownership limitations of Federal reclamation law including this title.

(11) The term "Secretary" means the Secretary of the Interior. (96 Stat. 1263; 43 U.S.C. § 390bb)

EXPLANATORY NOTE

Reference in the Text. The section of the Internal Revenue Code of 1954 (26 U.S.C. § 152) referred to in section 202(4) of the text defines the term "dependent" and prescribes rules and tests relating to that definition concerning, among other things, citizenship, adoption, students, children of divorced parents, and multiple support agreements. The Internal Revenue Code does not appear herein.

Sec. 203. [Applicability to districts which enter into new or amended contracts—Deliveries to districts which do not enter into amended contracts within 4½ years of date of enactment—Irrevocable election by qualified or limited recipients.]—(a) The provisions of this title shall be applicable to any district which—

(1) enters into a contract with the Secretary subsequent to the date of enactment of this Act;

(2) enters into any amendment of its contract with the Secretary subsequent to the date of enactment of this Act which enables the district to receive supplemental or additional benefits; or

(3) which amends its contract for the purpose of conforming to the provisions of this title.

(b) Any district which has an existing contract with the Secretary as of the date of enactment of this Act which does not enter into an amendment of such contract as specified in subsection (a) shall be subject to Federal reclamation law in effect immediately prior to the date of enactment of this Act, as that law is amended or supplemented by sections 209 through 230 of this title. Within a district that does not enter into an amendment of its contract with the Secretary within four and one-half years of the date of enactment of this Act, irrigation water may be delivered to lands leased in excess of a landholding of one hundred and sixty acres only if full cost, as defined in section 202(A) of this title, is paid for such water as is assignable to those lands leased in excess of such landholding of one hundred and sixty acres: *Provided,* That the interest rate used in computing full cost under this subsection shall be the same as provided in section 205(a)(3).

(c) In the absence of an amendment to a contract, as specified in subsection (a), a qualified recipient or limited recipient may elect to be subject to the provisions of this title by executing an irrevocable election in a form approved by the Secretary to comply with this title. The district shall thereupon deliver irrigation water to and collect from such recipient, for the credit of the United States, the additional charges required by this title and assignable to the recipient making the election.

(d) Amendments to contracts which are not required by the provisions of this title shall not be made without the consent of the non-Federal party. (96 Stat. 1264; 43 U.S.C. § 390cc)

Sec. 204. [Acreage ownership limitations.]—Except as provided in section 209 of this title, irrigation water may not be delivered to—

(1) a qualified recipient for use in the irrigation of lands owned by such qualified recipient in excess of nine hundred and sixty acres of class I lands or the equivalent thereof; or

(2) a limited recipient for the use in the irrigation of lands owned by such limited recipient in excess of six hundred and forty acres of class I lands or the equivalent thereof;

whether situated in one or more districts. (96 Stat. 1265; 43 U.S.C. § 390dd)

Sec. 205. [Full cost pricing—Interest rate—Less than full cost pricing—Deliveries to lands under recordable contract.]—(a) Notwithstanding any other provision of law, any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water at full cost as defined in section 202(3) to:

(1) a landholding in excess of nine hundred and sixty acres of class I lands or the equivalent thereof for a qualified recipient,

(2) a landholding in excess of three hundred and twenty acres of class I land or the equivalent thereof for a limited recipient receiving irrigation water on or before October 1, 1981; and

(3) the entire landholding of a limited recipient not receiving irrigation water on or before October 1, 1981: *Provided,* That the interest rate used in computing full cost under this paragraph shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of—

(A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(B) the weighted average of market yields on all interest-bearing, marketable issues sold by the Treasury

during the fiscal year preceding the fiscal year in which the expenditures are made, or the date of enactment of this Act for expenditures made before such date of enactment.

(b) Any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water to lands not in excess of the landholdings described in subsection (a) upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment

of this Act, or, in the case of an amended contract, upon the terms and conditions established by such contract prior to the date of its amendment. However, the portion of any price established under this subsection which relates to operation and maintenance charges shall be established pursuant to section 208 of this title.

(c) Notwithstanding any extension of time of any recordable contract as provided in section 209(e) of this title, lands under recordable contract shall be eligible to receive irrigation water at less than full cost for a period not to exceed ten years from the date such recordable contract was executed by the Secretary in the case of contracts existing prior to the date of enactment of this Act, or five years from the date such recordable contract was executed by the Secretary in the case of contracts entered into subsequent to the date of enactment, or the time specified in section 218 for lands described in that section: *Provided,* That in no case shall the right to receive water at less than full cost under this subsection terminate sooner than eighteen months after the date on which the Secretary again commences the processing or the approval of the disposition of such lands. (96 Stat. 1265; 43 U.S.C. § 390ee)

Sec. 206. [Certification of compliance a condition of receipt of water.]—As a condition to the receipt of irrigation water for lands in a district which has a contract as specified in section 203, each landowner and lessee within such district shall furnish the district, in a form prescribed by the Secretary, a certificate that they are in compliance with the provisions of this title including a statement of the number of acres leased, the term of any lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require any lessee to submit to him, for his examination, a complete copy of any such lease executed by each of the parties thereto. (96 Stat. 1266; 43 U.S.C. § 390ff)

Sec. 207. [Equivalency.]—Upon the request of any district, the ownership and pricing limitations imposed by this title shall apply to the irrigable lands classified within such district by the Secretary as having class I productive potential, as determined by the Secretary, taking into account all factors which significantly affect productivity, including but not limited to topography, soil characteristics, length of growing season, elevation, adequacy of water supply, and crop adaptability. (96 Stat. 1266; 43 U.S.C. § 390gg)

Sec. 208. [Recovery of operation and maintenance charges—Amendment of contracts to reflect changes in operation and maintenance costs.]—(a) The price of irrigation water delivered by the Secretary pursuant to a contract or an amendment to a contract with a district, as specified in section 203, shall be at least sufficient to recover all operation and maintenance charges which the district is obligated to pay to the United States.

(b) Whenever a district enters into a contract or requests that its contract be amended as specified in section 203, and each year thereafter, the Secretary shall calculate such operation and maintenance charges and shall modify the price of irrigation water delivered under the contract as nec-

essary to reflect any changes in such costs by amending the district's contract accordingly.

(c) This section shall not apply to districts which operate and maintain project facilities and finance the operation and maintenance thereof from non-Federal funds. (96 Stat. 1267; 43 U.S.C.§ 390hh)

Sec. 209. [Deliveries to excess lands—Time periods for disposal of lands under recordable contract—Disposal by the Secretary—Extension of time period for disposal—Eligibility of excess lands disposed of in compliance with reclamation law to receive irrigation water.]—(a) Irrigation water made available in the operation of reclamation project facilities may not be delivered for use in the irrigation of lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, unless and until the owners thereof shall have executed a recordable contract with the Secretary, in accordance with the terms and conditions required by Federal reclamation law, requiring the disposal of their interest in such excess lands within a reasonable time to be established by the Secretary. In the case of recordable contracts entered into prior to the date of enactment of this Act, such reasonable time shall not exceed ten years after the recordable contract is executed by the Secretary. In the case of recordable contracts entered into after the date of enactment of this Act, except as provided in section 218, such reasonable time shall not exceed five years after the recordable contract is executed by the Secretary.

(b) Lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, which, on the date of enactment of this Act, are, or are capable of, receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may receive such deliveries only—

(1) if the disposal of the owner's interest in such lands is required by an existing recordable contract with the Secretary, or

(2) if the owners of such lands have requested that a recordable contract be executed by the Secretary.

(c) Recordable contracts existing on the date of enactment of this Act shall be amended at the request of the landowner to conform with the ownership limitations contained in this title: *Provided*, That the time period for disposal of excess lands specified in the existing recordable contract shall not be extended except as provided in subsection (e).

(d) Any recordable contract covering excess lands sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the recordable contract. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process only to qualified purchasers according to such reasonable rules and regulations as the Secretary may establish: *Provided*, That the Secretary shall recover for the owner the fair market value of the land unrelated to irrigation water deliveries plus the fair market value of improvements thereon.

(e) In the event that the owner of any lands in excess of the ownership limitations of Federal reclamation law has heretofore entered into a re-

cordable contract with the Secretary for the disposition of such excess lands and has been prevented from disposing of them because the Secretary may have withheld the processing or approval of the disposition of the lands (whether he may have been compelled to do so by court order or for other reasons), the period of time for the disposal of such lands by the owner thereof pursuant to the contract shall be extended from the date on which the Secretary again commences the processing or the approval of the disposition of such lands for a period which shall be equal to the remaining period of time under the recordable contract for the disposal thereof by the owner at the time the decision of the Secretary to withhold the processing or approval of such disposition first became effective.

(f) Excess lands which have been or may be disposed of in compliance with Federal reclamation law, including this title, shall not be considered eligible to receive irrigation water unless—

(1) they are held by nonexcess owners; and

(2) in the case of disposals made after the date of enactment of this Act, their title is burdened by a covenant prohibiting their sale, for a period of ten years after their original disposal to comply with Federal reclamation law, including this title, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e). (96 Stat. 1267; 43 U.S.C. § 390ii)

EXPLANATORY NOTE

Reference in the Text. The Act of May 25, 1926, referred to in subsection (f) of the text, is the Omnibus Adjustment Act of 1926 (44 Stat. 636). Section 46 thereof (43 U.S.C. § 423e) requires repayment contracts with irrigation districts to provide that privately-owned excess lands shall be appraised in a manner prescribed by the Secretary on the basis of its actual bona fide value without reference to construction of the irrigation works, that no such excess lands shall receive water unless the owners execute recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, and that until one half the construction charges against said lands have been paid, no sale of such lands shall carry the right to receive water unless the purchase price involved is approved by the Secretary. Section 46 of the 1926 Act appears in Volume I at page 376.

Sec. 210. [Water conservation.]—(a) The Secretary shall, pursuant to his authorities under otherwise existing Federal reclamation law, encourage the full consideration and incorporation of prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal reclamation projects, where such measures are shown to be economically feasible for such non-Federal recipients.

(b) Each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply

Act of 1958, as amended (43 U.S.C. 390b), shall develop a water conservation plan which shall contain definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives.

(c) The Secretary is authorized and directed to enter into memorandums of agreement with those Federal agencies having capability to assist in implementing water conservation measures to assure coordination of ongoing programs. Such memorandums should provide for involvement of non-Federal entities such as States, Indian tribes, and water user organizations to assure full public participation in water conservation efforts. (96 Stat. 1268; 43 U.S.C. § 390jj)

EXPLANATORY NOTE

Reference in the Text. The Water Supply Act of 1958 (Act of July 3, 1958, 43 U.S.C. § 390b), referred to in subsection (b) of the text, appears in Volume II at page 1426.

Sec. 211. [Residency not required.]—Notwithstanding any other provision of law, irrigation water made available from the operation of reclamation project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees, or operators do not live on or near them. (96 Stat. 1269; 43 U.S.C. § 390kk)

Sec. 212. [Applicability to projects constructed by the Corps of Engineers—Contract obligations to repay costs allocated to conservation or irrigation storage shall remain in effect.]—(a) Notwithstanding any other provision of law, neither the ownership or pricing limitation provisions nor the other provisions of Federal reclamation law, including this title, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers, unless—

(1) the project has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal reclamation project; or

(2) the Secretary, pursuant to his authority under Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

(b) Notwithstanding any other provision of this section to the contrary, obligations that require water users, pursuant to contracts with the Secretary, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administrative costs of a Corps of Engineers project which are allocated to conservation storage or irrigation storage shall remain in effect. (96 Stat. 1269; 43 U.S.C. § 390ll)

Sec. 213. [Ownership and full cost pricing limitations shall not apply after obligation to repay construction costs has been discharged—Certificate acknowledging freedom from limitations—Lump sum or accelerated repayment.]—(a) The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district after the obligation of a district for the repayment of the construction costs of the project facilities used to make project water available for delivery to such lands shall have been discharged by a district (or by a person within the

district pursuant to a contract existing on the date of enactment of this Act), by payment of periodic installments throughout a specified contract term, including individual or district accelerated payments where so provided in contracts existing on the date of enactment of this Act.

(b)(1) The Secretary shall provide, upon request of any owner of a landholding for which repayment has occurred, a certificate acknowledging that the landholding is free of the ownership or full cost pricing limitation of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of the county in which such landholding is located.

(2) Any certificate issued by the Secretary prior to the date of enactment of this Act acknowledging that the landholding is free of the acreage limitation of Federal reclamation law is hereby ratified.

(c) Nothing in this title shall be construed as authorizing or permitting lump sum or accelerated repayment of construction costs, except in the case of a repayment contract which is in effect upon the date of enactment of this Act and which provides for such lump sum or accelerated repayment by an individual or district. (96 Stat. 1269; 43 U.S.C. § 390mm)

Sec. 214. [Trusts.]—The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district which are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the ownership and pricing limitations imposed by Federal reclamation law, including this title. (96 Stat. 1270; 43 U.S.C. § 390nn)

Sec. 215. [Temporary supply of water.]—(a) Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which receive only a temporary, not to exceed one year, supply of water made possible as a result of—

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged flood flows of short duration.

(b) The Secretary shall have the authority to waive payments for a supply of water described in subsection (a). (96 Stat. 1270; 43 U.S.C. § 390oo)

Sec. 216. [Lands acquired by involuntary process of law, conveyance in satisfaction of debt, inheritance or devise.]—Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, or by devise: *Provided,* That such lands were eligible to receive irrigation water prior to such transfer of title or the mortgaged lands became ineligible to receive water after the mortgage is recorded but before it is acquired by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of mortgage: *Provided further,* That if, after acquisition, such lands are not qualified under Federal reclamation law, including this title, they shall be furnished temporarily with an irrigation

water supply for a period not exceeding five years from the effective date of such an acquisition, delivery of irrigation water thereafter ceasing until the transfer thereof to a landowner qualified under such laws: *Provided further,* That the provisions of section 205 of this title shall be applicable separately to each acquisition under this section if the lands are otherwise subject to the provisions of section 205. (96 Stat. 1270; 43 U.S.C. § 390pp)

Sec. 217. [Isolated tracts.]—Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which are isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed such ownership limitations. (96 Stat. 1270; 43 U.S.C. § 390qq)

Sec. 218. [Central Arizona Project—Eligibility of lands placed under recordable contract.]—Lands receiving irrigation water pursuant to a contract with the Secretary as authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521 et seq.) which are placed under recordable contract shall be eligible to receive irrigation water upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, for a period of time not to exceed ten years from the date such lands are capable of being served with irrigation water, as determined by the Secretary. (96 Stat. 1271; 43 U.S.C. § 390rr)

EXPLANATORY NOTE

Reference in the Text. Title III of the Colorado River Basin Project Act (Act of September 30, 1968), referred to in the text, authorized the Central Arizona Project for the purposes of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and Western New Mexico, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes. The 1968 Act appears in Volume IV in chronological order.

Sec. 219. [Religious or charitable organizations.]—An individual religious or charitable entity or organization (including but not limited to a congregation, parish, school, ward, or chapter) which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, as amended, and which owns, operates, or leases any lands within a district shall be treated as an individual under the provisions of this title regardless of such entity or organization's affiliation with a central organization or its subjugation to a hierarchical authority of the same faith and regardless of whether or not the individual entity is the owner of record if—

(1) the agricultural produce and the proceeds of sales of such produce are directly used only for charitable purposes;

(2) said land is operated by said individual religious or charitable entity or organization (or subdivision thereof); and

(3) no part of the net earnings of such religious or charitable entity or organization (or subdivision thereof) shall inure to the benefit of any private shareholder or individual. (96 Stat. 1271; 43 U.S.C. § 390ss)

Sec. 220. [Water temporarily made available—Contract required.]—Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such irrigation water would not have been available without the operations of those facilities, may be used for irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such irrigation water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of Federal reclamation law. (96 Stat. 1291; 43 U.S.C. § 390tt)

EXPLANATORY NOTE

Reference in the Text. The Reclamation Project Act of 1939 (Act of August 4, 1939, 53 Stat. 1187 43 U.S.C. § 485 et seq.), referred to in the text, appears in Volume I at page 634.

Sec. 221. [Suits to adjudicate, confirm, validate, or decree contractual rights—Waiver of sovereign immunity.]—Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated. (96 Stat. 1271; 43 U.S.C. § 390uu)

Sec. 222. (a) [Production of surplus crops—Secretary of Agriculture shall transmit report to Congress—Existing restrictions prohibiting delivery of water.]—Within one year of the date of enactment of this Act, the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to the Congress a report on the production of surplus crops on acreage served by irrigation water. The report shall include—

(1) data delineating the production of surplus crops on lands served by irrigation water.

(2) the percentage of participation of farms served by irrigation water in set-aside programs, by acreage, crop, and State;

(3) the feasibility and appropriateness of requiring the participation in acreage set-aside programs of farms served by irrigation water and the costs of such a requirement; and

(4) any recommendations concerning how to coordinate national reclamation policy with agriculture policy to help alleviate recurring problems of surplus crops and low commodity prices.

(b) In addition, notwithstanding any other provision of law, in the case of any Federal reclamation project authorized before the date of enactment of this Act, any restric

on prohibiting the delivery of irrigation water for the production of excess

basic agricultural commodities shall extend for a period no longer than ten years after the date of the initial authorization of such project. (96 Stat. 1271; 43 U.S.C. § 390vv)

Sec. 223. [Amendment to Small Reclamation Projects Act.]—Section 5(c)(2) of the Act of August 6, 1956 (43 U.S.C. 422e), is amended by striking out "by any one owner in excess of one hundred and sixty irrigable acres;" and inserting in lieu thereof "by a qualified recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of nine hundred and sixty irrigable acres, or by a limited recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of three hundred and twenty irrigable acres;". (96 Stat. 1272)

EXPLANATORY NOTE

Reference in the Text; Editor's Note, Annotations. The Act of August 6, 1956 (70 Stat. 1044), referred to in and amended by section 223 of the text, is the Small Reclamation Projects Act of 1956. Section 5(c)(2) of the 1956 Act appears in Volume II at page 1336. Annotations of opinions concerning the Small Reclamation Projects Act are found in Volume II at page 1332, 1336 and 1338 and in Supplement I under "August 6, 1956 — Small Reclamation Projects Act."

Sec. 224. [Existing law and statutory exemptions preserved—Regulations and data collection—Removal of 25-year limitation on receipt of water by lessees of State-owned lands not subject to recordable contract—Nonexcess land involuntarily acquired into excess status—Repeal of cost limitation requirements for new projects for Indian lands.]—(a) The provisions of Federal reclamation law shall remain in full force and effect, except to the extent such law is amended by, or is inconsistent with, this title.

(b) Nothing in this title shall repeal or amend any existing statutory exemptions from the ownership or pricing limitations of Federal reclamation law.

(c) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

(d) Section 3 of the Act of July 7, 1970 (43 U.S.C. 425b) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(e) Any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, may be sold at its fair market value without regard to any other provision of this title or to section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e): *Provided*, That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law, by bona fide con-

veyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(f) The first proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270), as amended by the Act of August 7, 1946 (60 Stat. 866, 867), is hereby repealed. (96 Stat. 1272; 43 U.S.C. § 390ww)

EXPLANATORY NOTES

Reference in the Text. The Act of July 7, 1970 (84 Stat. 411), referred to in subsection (d) of the text, provides for differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Reclamation law. The 1970 Act appears in Volume IV in chronological order.

Reference in the Text. The Act of May 25, 1926, referred to in subsection (e) of the text, is the Omnibus Adjustment Act of 1926 (44 Stat. 636). Section 46 thereof (43 U.S.C. § 423e) requires repayment contracts with irrigation districts to provide that privately-owned excess lands shall be appraised in a manner prescribed by the Secretary on the basis of its actual bona fide value without reference to construction of the irrigation works, that no such excess lands shall receive water unless the owners execute recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, and that until one-half the construction charges against said lands have been paid, no sale of such lands shall carry the right to receive water unless the purchase price involved is approved by the Secretary. Section 46 of the 1926 Act appears in Volume I at page 376.

Reference in the Text. The Act of April 4, 1910 (36 Stat. 269), referred to in subsection (f) of the text, appropriated funds for the Bureau of Indian Affairs for the fiscal year ending June 30, 1911. The first proviso of the third paragraph of section 1 of that Act was repealed by section 224(f). Prior to repeal of the first proviso, the third paragraph of section 1 read as follows:

> "For the construction, repair and maintenance of ditches, reservoirs, and dams, purchase and use of irrigation tools and appliances, water rights, lands necessary for canals, pipe lines and reservoirs for Indian reservations and allotments, and for drainage and protection of irrigable lands from damage by floods, two hundred and forty-nine thousand one hundred dollars, of which twenty-five thousand dollars shall be immediately available, and the balance of the appropriation shall remain available until expended: *Provided,* That no part of this appropriation shall be expended on any irrigation system or reclamation project for which specific appropriation is made in this Act or for which public funds are or may be available under any other Act of Congress, and hereafter no new irrigation project on any Indian reservation, allotments or lands, shall be undertaken until it shall have been estimated for and a maximum limit of cost ascertained from surveys, plans, and reports submitted by the chief irrigation engineer in the Indian service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and such limit of cost shall in no case be exceeded without express authorization of Congress, and hereafter no new project to cost in the aggregate to exceed thirty-five thousand dollars shall be undertaken on any Indian reservation or allotment without specific authority of Congress; and the Secretary of the Interior shall transmit to Congress on the first Monday in December, nineteen hundred and ten, a statement, by systems or projects, showing the original estimated cost, the present estimated cost, and the total amount of all moneys, from whatever source derived, expended thereon for construction, extension, repair, or maintenance, of each irrigation system or reclamation project on Indian reservations, allotments or lands to and including June thirtieth, nineteen hundred and ten; and annually thereafter the Secretary of the Interior shall transmit to Congress a cost account of all moneys, from whatever source derived, expended on each such irrigation project for the preceding fiscal year. . . ."

The last clause of the proviso, requiring the Secretary to transmit an annual cost account to Congress for each irrigation project, had previously been repealed by Item 8 of the Act of August 7, 1946 (60 Stat. 866) also referred to in subsection (f) of the text. The third paragraph of section 1 of the Act of April 4, 1910 and Item 8 of the Act of August 7, 1946 do not appear herein.

Sec. 225. [Validation of contract provisions concerning project or nonproject water and facilities.]—The provisions of any contract entered into prior to October 1, 1981, by the Secretary with a district, which define project or nonproject water, or describe the delivery of project water through nonproject facilities or nonproject water through project facilities to lands within the district, are hereby authorized and validated on the part of the United States. (96 Stat. 1273; 43 U.S.C. § 390xx)

Sec. 226. [Proposed contracts or amendments thereto—Public notice and participation.]—Section 9 of the Reclamation Project Act of 1939 (43 U.S.C. 485h) is amended by adding at the end the following new subsection:

"(f) No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose duration is for one year or less) the Secretary shall—

"(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

"(2) provide an opportunity for submission of written data, views and arguments so received.". (96 Stat. 1273; 43 U.S.C. § 485h)

EXPLANATORY NOTE

Reference in the Text; Editor's Note, Annotations. Section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1193), referred to in and amended by the text, appears in Volume I at page 643. Annotations of opinions concerning the 1939 Act appear in Volume I at pages 644-651 and 654-663 and in Supplement I under "August 4, 1939 — Reclamation Project Act of 1939."

Sec. 227. [Leased lands—Perennial crops.]—Notwithstanding any other provision of Federal reclamation law, including this title, lands which receive irrigation water may be leased only if the lease instrument is—

(1) written; and

(2) for a term not to exceed ten years, including any exercisable options: *Provided, however,* That leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years. (96 Stat. 1273; 43 U.S.C. § 390yy)

Sec. 228. [Contracting entity shall compile and maintain records and information and provide annual reports to Secretary.]—Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require. (96 Stat. 1274; 43 U.S.C. § 390zz)

Sec. 229. [Appointment of Commissioner of Reclamation subject to advice and consent of the Senate.]—The Act of May 26, 1926 (44 Stat. 657), is amended by adding the words "by and with the advice and consent of the Senate" after the word "President". (96 Stat. 1274; 43 U.S.C § 373a)

EXPLANATORY NOTE

Reference in the Text. The Act of May 26, 1926 (43 U.S.C. § 373a), referred to in and amended by the text, provides for the appointment by the President of the Commissioner of Reclamation. The 1926 Act appears in Volume I at page 390.

Sec. 230. [Severability.]—If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby. (96 Stat. 1274; 43 U.S.C. § 390zz-1)

TITLE III

Sec. 301. [Congressional findings concerning settlement of water rights claims of Papago Tribe.]—The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe. (96 Stat. 1274)

Sec. 302. [Definitions: "subjugate", "Tucson Active Management Area", "December 11, 1980, agreement", "replacement costs", "value".]—For purposes of this title—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater. (96 Stat. 1275)

EXPLANATORY NOTE

References in the Text. The Colorado River Basin Project Act (Act of September 30, 1968, Public Law 90-537), referred to in paragraph (2) of the text, appears in Volume IV in chronological order. The Act of June 18, 1934, referred to in paragraph (3) of the text, does not appear herein.

Sec. 303. [Water deliveries to the Tribe from the Central Arizona Project—Construction and improvement of on-Reservation irrigation systems—Authorization of appropriations for irrigation systems—Water management plan—Water and energy availability studies—Tribe shall retain right to withdraw groundwater—Obligations of Secretary under 1980 agreement not diminished or abrogated—No intent to establish whether Federal reserved rights doctrine applies to groundwater.]—(a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

(4) There are authorized to be appropriated up to $3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

(b)(1)In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 306(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water. (96 Stat. 1275)

Sec. 304. [Central Arizona Project water shall be delivered pursuant to 1980 agreement—Alternative sources of water—Damages for inability to acquire and deliver water—Conditions and limitations on acquisition of land, interests therein, water, water rights, contract rights, or reclaimed water—Construction and operation of delivery systems for Central Arizona Project water—Authorization of appropriations for delivery systems—Authorization to enter into contracts or agreements to facilitate delivery of water.]—(a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—

(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72–240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds. (96 Stat. 1276)

EXPLANATORY NOTE

Reference in the Text. The Act of July 1, 1932 (47 Stat. 564), referred to in subsection (e)(2) of the text, is known as the Leavitt Act. It authorizes and directs the Secretary to ad-

just or eliminate reimbursable charges existing as debts against individual Indians or tribes of Indians in an equitable and just manner in consideration of the circumstances under which the charges were made and provides that the collection of all construction costs against Indian-owned lands within any Government irrigation project shall be deferred and no assessments made for such charges until the Indian title to such lands has been extinguished. The 1932 Act appears in volume I at page 504.

Sec. 305. [Acquisition and delivery to the Tribe of reclaimed water—Obligation may be fulfilled by voluntary exchange—Construction and operation of delivery facilities—Tribe responsible for costs of construction and operation of on-reservation distribution systems—Secretary shall not construct separate delivery system—Use of unused capacity of Central Arizona Project main works—Alternative sources of water—Damages for inability to acquire and deliver reclaimed water—Conditions and limitations on acquisition of land, interests therein, water, water rights, contract rights, or reclaimed water.]—(a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago reservation.

(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available

for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community. (96 Stat. 1278)

Sec. 306. [Obligations of the Secretary under sections 304(b), (c), and (e) and 305 contingent upon Tribe's agreement to limit groundwater pumping and comply with management plan—Exception for wells with a capacity of less than 35 gpm—Obligations of the Secretary concerning distribution systems under sections 303(a)(1)(B) and (2)(B) contingent upon Tribe's agreement to subjugate land and assume responsibility for operation and maintenance after delivery of water—Use of water by the Tribe—Right of Tribe to sell, exchange, or dispose of water—Contract approved and executed by the Secretary required—Use of proceeds—No intent to establish whether reserved water may be used or sold off-reservation.]—(a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the

Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3)

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach. (96 Stat. 1279)

EXPLANATORY NOTE

Reference in the Text. The section of the Act of August 1, 1914 referred to in subsection (b)(2) of the text deals with apportionment and reimbursability from Indian funds of the costs of Indian irrigation projects and the authority of the Secretary to fix maintenance charges for irrigable lands within such projects. This section of the 1914 Act does not appear herein.

Sec. 307. [Obligations of the Secretary under sections 304(b), (c) and (e) and 305 contingent upon agreement within 1 year with Tucson to make available reclaimed water, agreement within 1 year on funding of Cooperative Fund, execution by Tribe within 1 year of waiver and release of all claims of or injuries to water rights, filing by Tribe within 1 year of voluntary dismissal of lawsuit, and final dismissal of lawsuit—Agreements to acquire and deliver water from alternative sources—No intent to waive or release claims arising under this Act—Effective date of waiver and release—Settlement deemed to satisfy all claims of water rights or injuries thereto.]—(a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title:

(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75–39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water)

within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title. (96 Stat. 1281)

Sec. 308. [Studies of lands within Gila Bend Reservation—Exchange of Gila Bend lands for public domain lands—Tribal consent required—Lands exchanged shall be held in trust for Tribe—Former Gila Bend lands shall be managed by Bureau of Land Management—Reimbursement for moneys paid for flood easements.]—(a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation

have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b). (96 Stat. 1282)

Sec. 309. [Establishment of Trust fund—Expenditures from fund.]—(a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of $15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress. (96 Stat. 1282)

Sec. 310. [Applicability of Indian Self-Determination and Education Assistance Act.]—The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs. (96 Stat. 1283)

EXPLANATORY NOTE

Reference in the Text. The Indian Self-Determination and Education Assistance Act (Act of January 4, 1975, Public Law 93-638), referred to in the text, does not appear herein.

Sec. 311. [Statute of limitations.]—Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States

Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985. (96 Stat. 1283)

EXPLANATORY NOTE

Reference in the Text. Section 2415 of title 28 of the U.S. Code, referred to in the text, establishes statutes of limitations governing the commencement of various types of legal actions brought by the United States, including actions brought for or on behalf of individual Indians or Indian tribes. This provision does not appear herein.

Sec. 312. [Arid land renewable resources projects—Assistance to the Tribe.]—If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

(1) price guarantees, loan guarantees, or purchase agreements,

(2) loans, and

(3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe. (96 Stat. 1283)

Sec. 313. [Cooperative Fund—Establishment—Purposes—Composition of Fund—Authorization of appropriations to Fund—Only interest may be expended—Secretary of the Treasury shall be trustee—Termination—Payments for damages shall not exceed amounts available for expenditure.]—(a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) $5,250,000 to be contributed as follows:

(i) $2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) $1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

(iii) $1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine [sic] Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) $5,250,000; and

(B) Such sums up to $16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title—

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed. the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United

States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section. (96 Stat. 1284)

Sec. 314. [Limitation on authority to enter into contracts or make payments—Effective date for new budget authority provided under this Act.]—No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982. (96 Stat. 1285)

Sec. 315. [Short title.]—This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982". (96 Stat. 1285)

EXPLANATORY NOTES

Not Codified. Title III of this Act is not codified in the U.S. Code.

Legislative History. S. 1867 (Reclamation Reform) in the 97th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97-373. H.R. 5539 (Reclamation Reform) in the 97th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 97-458. Passed House May 6, 1982. Amended and Passed Senate, in lieu of S. 1867, July 16, 1982. H.R. 5118 (Southern Arizona Water Rights) in the 97th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 97-422. Reported in Senate from Indian Affairs; S. Rept. No. 97-375. Passed House March 4, 1982. Passed Senate, amended, May 11, 1982. House concurs in Senate amendment, with amendments, May 12, 1982. Senate concurs in House amendments May 13, 1982. Vetoed by President June 1, 1982. S. 1409 (Buffalo Bill) in the 97th Congress. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97-420. Conference reports: H.R. Rept. No. 97-855; S. Rept. No. 97-568. Passed Senate June 22, 1982. Passed House August 17, 1982, with amendment in the nature of a substitute comprised of three titles: Title I being S. 1409 as it passed the Senate; Title II being H.R. 5539 as it passed the House; and Title III being a modified version of H.R. 5118. Senate concurs in House amendment, with amendments, August 20, 1982. Senate agrees to conference report September 24, 1982. House agrees to conference report September 29, 1982.

PLATTE RIVER WATER RESOURCE USE AND DEVELOPMENT STUDY

An act to authorize the Secretary of the Interior to participate with the State of Nebraska in studies of Platte River water resource use and development, and for other purposes. (Act of October 15, 1982, Public Law 97-338, 96 Stat. 1633)

[Sec. 1. Secretary authorized to engage in study to assist State of Nebraska in establishing water resource conservation and development priorities—Purposes of study.]—The Secretary of the Interior is hereby authorized to engage in a special study to assist the State of Nebraska in establishing water resource conservation and development priorities, consistent with constitutional and statutory provisions of the State of Nebraska, in the Platte River Basin from the western border of the State of Nebraska to the confluence of the Platte and Missouri Rivers.

The purposes of the study shall be to—

(a) determine the availability of water resources within the basin;

(b) identify, define, and quantify the existing and foreseeable intrabasin and interbasin demands on such resources within the State of Nebraska (including irrigation, ground water stabilization and recharge, enhancement of water quality, small community and rural domestic water supplies, management of fish and wildlife habitat, public outdoor recreation, preservation of scenic qualities, flood control, hydroelectric power development, municipal and industrial water supplies, and such other demands as the study may identify);

(c) identify, evaluate, and estimate costs for alternative methods of meeting the identified water demands, including but not limited to withdrawals from the Platte River, groundwater pumping, water conservation, and improved water management; and

(d) resolve the identified conflicts by making specific recommendations on the full and best utilization of the available water supply, including a priority ranking for implementing recommended water conservation and development projects.

Sec. 2. [Composition of study body—Completion date.]—The special study authorized by section 1 of this Act shall be a Federal-State study conducted jointly by the Bureau of Reclamation and the Nebraska Natural Resources Commission. The broadly constituted study body responsible for making the recommendations required by section 1 shall consist of such citizens, representatives of agricultural, environmental and development groups, State and local officials, and Federal agency representatives as the Governor of Nebraska and the Secretary shall jointly determine. Federal agencies invited to participate shall include, but not be limited to, the U.S. Geological Survey, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency. The special study authorized by section 1 of this

Act shall be completed within thirty months after funds are first appropriated under this Act.

Sec. 3. [Authorization of appropriations—Matching non-federal share.]—(a) There is hereby authorized to be appropriated the sum of $350,000 to carry out section 1 of this Act. One-half of this sum shall be made available as a grant to the Nebraska Natural Resources Commission and shall be matched equally by direct contribution or in kind services by the State of Nebraska, its political subdivisions, or other non-Federal entities.

(b) The sums expended or services provided by the State of Nebraska, its political subdivisions, or other non-Federal entities after March 9, 1982, for the purposes of this Act shall be considered in the determination of the matching non-Federal share. (96 Stat. 1633)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 6188, Public Law 97-388 in the 97th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 97-713. Reported in Senate from Energy and Natural Resources; S. Rept. No. 97-562. Passed House August 16, 1982. Passed Senate October 1, 1982.

AMEND COLORADO RIVER BASIN PROJECT ACT

An Act to amend title III of the Colorado River Basin Project Act, Public Law 90–537 (82 Stat. 885), as amended by Public Law 95–578 (92 Stat. 2471), and Public Law 96–375 (94 Stat. 1505). (Act of December 20, 1982, Public Law 97–373, 96 Stat. 1817)

[Amendment to permit cost indexing of appropriation ceiling for construction of non-Indian distribution systems—Agreements with non-Federal interests to provide not less than 20% of total cost required.]—Public Law 90–537 (82 Stat. 885), as amended is further amended to provide for cost indexing as may be justified by reason of ordinary fluctuations in construction costs.

Section 309(b), first sentence, is amended to read: "There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering and cost indices applicable to the types of construction involved therein from the date of the Colorado River Basin Project Act: *Provided,* That the Secretary shall enter into agreements with non-Federal interests to provide not less than 20 per centum of the total cost of such facilities during the construction of such facilities.". (96 Stat. 1817; 43 U.S.C. § 1528)

Explanatory Notes

Editor's Note, Annotations. Annotations of opinion dealing with the Colorado River Basin Project Act of 1968 (Act of September 30, 1968) are included in Volume IV under that Act.

Legislative History. S. 2177, Public Law 97–373 in the 97th Congress. Reported in Senate from Energy and Natural Resources May 12, 1982; S. Rept. No. 97–389. Passed Senate May 19, 1982. Reported in House from Interior and Insular Affairs August 19, 1982; H.R. Rept. No. 97–776 and No. 97-776, Pt. 2. Passed House, amended, September 30, 1982. Senate concurs in House amendment, with amendment, December 8, 1982. House agrees to Senate amendment December 9, 1982.

CONGRESSIONAL REPORTS ELIMINATION ACT OF 1982

[Extract from] An act to discontinue or amend certain requirements for agency reports to Congress. (Act of December 21, 1982, Public Law 97–375, 96 Stat. 1819)

[Sec. 1. Short title.]—This Act may be cited as the "Congressional Reports Elimination Act of 1982". (96 Stat. 1819)

* * * * *

TITLE II—MODIFICATIONS

* * * * *

Sec. 208. [Amendments to Leavitt Act.]—(a)(1) The second proviso of the Act of July 1, 1932 (25 U.S.C. 386a; 47 Stat. 564), is amended to read as follows: "*Provided further*, That the Secretary shall report such adjustments and eliminations to the Congress not later than sixty calendar days following the end of the fiscal year in which they are made:".

(2) The last proviso of said Act of July 1, 1932, is amended by striking out "sixty legislative days" each place it appears and, in each instance, inserting in lieu thereof "ninety calendar days". (96 Stat. 1824)

* * * * *

EXPLANATORY NOTES

Not Codified. The extract from this Act reprinted herein is not codified in the U.S. Code.

Reference in the Text; Editor's Note, Annotations. The Act of July 1, 1932, referred to in and amended by the text, is popularly known as the Leavitt Act. The 1932 Act, which provides for adjustment or elimination of reimbursable debts against individual Indians or Indian tribes and deferment of irrigation construction charges against Indian-owned lands, appears in Volume I at page 504. Annotations of opinions are found in Volume I at page 504 and in Supplement I under "July 1, 1932—Leavitt Act."

Legislative History. H.R. 6005 and S. 2258 in the 97th Congress. H.R. 6005 reported in House from Government Operations. Passed House September 20, 1982. Passed Senate December 8, 1982.

FURTHER CONTINUING APPROPRIATIONS ACT, 1983

[Extracts from] A joint resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes. (Act of December 21, 1982, Public Law 97-377, 96 Stat. 1830)

* * * * *

Sec. 102. [Termination of funds availability and authority.]—Appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from December 17, 1982, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriation Act by both Houses without any provision for such project or activity, or (c) September 30, 1983, whichever first occurs. (96 Stat. 1909)

* * * * *

Sec. 114. [Market-based pricing studies for hydroelectric power prohibited.]—Notwithstanding any other provision of this joint resolution or any other provision of law, none of the funds made available under this resolution or any other law shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required "at cost" to a "market rate" or any other noncost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted. (96 Stat. 1912)

EXPLANATORY NOTE

Earlier Provision. A similar provision is contained in section 166 of the Continuing Appropriations Act for Fiscal Year 1983, Act of October 2, 1982. The 1982 Act appears in Volume IV in chronological order.

* * * * *

Sec. 115. [BPA transmission facilities approved.]—Notwithstanding any other provision of this joint resolution, except section 102, expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for construction of Boundary Integration and Colville Valley Support: * * * (96 Stat. 1912)

EXPLANATORY NOTES

Not Codified. The extracts of this Act reprinted here are not codified in the U.S. Code.

Reference in the Text. Public Law 93-454

(Act of October 18, 1974, 88 Stat. 1376), referred to in the text, is the Federal Columbia River Transmission System Act. The 1974 Act appears in Volume IV in chronological order.

Legislative History. H.J. Res. 631, Public Law 97-377 in the 97th Congress. H.R. Rept. No. 97-959. H.R. Rept. No. 97-980 (Conference Report).

ROBERT B. GRIFFITH WATER PROJECT

An act to designate the southern Nevada water project the "Robert B. Griffith Water Project". (Act of December 22, 1982, Public Law 97–381, 96 Sat. 1937)

[Project name changed.]—The southern Nevada water project, in Clark County, Nevada, shall hereafter be known and designated as the "Robert B. Griffith Water Project". Any reference in a law, map, regulation, document, record or other paper of the United States to that water project shall be held and considered to be a reference to the "Robert B. Griffith Water Project". (96 Stat. 1937)

EXPLANATORY NOTES

Reference in the Text. The Southern Nevada Water Project, referred to in the text, was authorized by the Act of October 22, 1965 (Public Law 89–292, 79 Stat. 1068), which appears in Volume III at page 1851.

Legislative History. S. 1681, Public Law 97–381 in the 97th Congress. Passed Senate April 1, 1982. Passed House December 13, 1982.