

**FEDERAL RECLAMATION AND  
RELATED LAWS ANNOTATED  
(PRELIMINARY)**

**UNITED STATES BUREAU OF RECLAMATION**

FEDERAL RECLAMATION AND  
RELATED LAWS ANNOTATED  
(PRELIMINARY)

VOLUME V OF FIVE VOLUMES  
1983-1998

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

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*Donald L. Walker*  
*Editor*



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## PREFACE

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

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

John W. Keys, III  
*Commissioner, Bureau of Reclamation*

## FOREWORD

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

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

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

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

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

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

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

October 2001

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R. Keith Higginson . . . . .	1977	(Acting) . . . . .	2001
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(recess appointment) . .	1988		

## TABLE OF CONTENTS

### VOLUME V

#### *Acts of the 98<sup>th</sup> Congress*

	<i>Page</i>
<i>1983</i>	
July 14 . . . Pub. L. 98-50 . . . Energy and Water Appropriation Act, 1984 (Extracts) . . . . .	3369
July 28 . . . Pub. L. 98-61 . . . Quitclaim Deed to the City of American Falls . . . . .	3371
July 30 . . . Pub. L. 98-63 . . . Supplemental Appropriations Act of 1983 (Extracts) . . . . .	3373
Nov. 17 . . Pub. L. 98-157 . . Belle Fourche Irrigation Project . . . . .	3376
Dec. 1 . . . Pub. L. 98-196 . . Orchard and Lake Shore Drives, Lake Lowell, Boise Project-Land Conveyance . . . . .	3380
<i>1984</i>	
Mar. 22 . . Pub. L. 98-242 . . Water Resources Research Act of 1984 . . . . .	3381
July 16 . . . Pub. L. 98-360 . . Energy and Water Development Appropriation Act of 1985 (Extracts) . . . . .	3399
Aug. 17 . . . Pub. L. 98-381 . . Hoover Power Plant Act of 1984 . . . . .	3403
Aug. 28 . . Pub. L. 98-404 . . The Reclamation Safety of Dams Act of 1984 . . . . .	3421
Sept. 28 . . Pub. L. 98-434 . . High Plains States Ground-water Demonstration Program Act of 1983 . . . . .	3424
Oct. 11 . . . Pub. L. 98-470 . . H&RW Irrigation District Amendatory Contract Act . . . . .	3429
Oct. 19 . . . Pub. L. 98-530 . . Ak-Chin Water Rights Settlement Act, Revised . . . . .	3431
Oct. 24 . . . Pub. L. 98-541 . . Trinity River Basin Fish and Wildlife Management Act of 1984 . . . . .	3439
Oct. 30 . . . Pub. L. 98-569 . . Colorado River Basin Salinity Control Act, Amendments Act . . . . .	3447
Oct. 30 . . . Pub. L. 98-570 . . Reclamation Project Authorization Act of 1972, Amendments Act . . . . .	3456

## TABLE OF CONTENTS

*Acts of the 99<sup>th</sup> Congress**1985*

Aug. 15	.. Pub. L. 99-88	.. Supplemental Appropriations Act of 1985 (Extracts) .....	3458
Nov. 1	... Pub. L. 99-141	.. Energy and Water Development Appropriations Act of 1986 (Extracts) .....	3462

*1986*

May 12	.. Pub. L. 99-294	.. Garrison Diversion Unit Reformulation Act of 1986 .....	3464
Sept. 23	.. Pub. L. 99-416	.. The Franklin Eddy Canal Act .....	3475
Oct. 8	.... Pub. L. 99-450	.. Colorado River Floodway Protection Act .....	3476
Oct. 16	... Pub. L. 99-495	.. Electric Consumers Protection Act of 1986 .....	3486
Oct. 20	... Pub. L. 99-503	.. Gila Bend Reservation Lands Replacement Act .....	3506
Oct. 23	... Pub. L. 99-517	.. Huntley Project Irrigation District Land Conveyance Act .....	3510
Oct. 27	... Pub. L. 99-546	.. Coordinated Operations Agreement ....	3512
		Title II-Suisun Marsh Preservation Agreement .....	3514
		Title III-Small Reclamation Projects Act Amendments .....	3515
		Title IV-Validation of Power Contracts .....	3518
Oct. 27	... Pub. L. 99-552	.. Klamath River Basin Restoration Program Act .....	3520
Nov. 14	.. Pub. L. 99-655	.. Lower Colorado Water Supply Act .....	3528
Nov. 17	.. Pub. L. 99-662	.. Water Resources Development Act of 1986 (Extracts) .....	3532

*Acts of the 100<sup>th</sup> Congress**1987*

April 2	... Pub. L. 100-17	.. Surface Transportation and Uniform Relocation Assistance Act of 1987 (Extract) .....	3545
Dec. 18	.. Pub. L. 100-196	.. Reclamation Authorization Act of 1976 Amendment .....	3558
Dec. 22	.. Pub. L. 100-202	.. Energy and Water Development Appropriations Act of 1988 (Extracts) .....	3559
Dec. 22	.. Pub. L. 100-203	.. Omnibus Budget Reconciliation Act of 1987 (Extracts) .....	3564

TABLE OF CONTENTS

*1988*

Aug. 11 .. Pub. L. 100-387 . Disaster Assistance Act of 1988  
 (Extracts) ..... 3573

Oct. 14 ... Pub. L. 100-490 . Web Pipeline Project ..... 3577  
 Title II—Central Valley Project Name Changes ..... 3577

Oct. 20 ... Pub. L. 100-512 . Salt River Pima-Maricopa Indian  
 Community Water Rights  
 Settlement Act of 1988 ..... 3579

Oct. 24 ... Pub. L. 100-516 . Mni Wiconi Project Act of 1988 ..... 3593

Oct. 28 ... Pub. L. 100-544 . Salt River Pima-Maricopa Indian  
 Reservation Land Addition Act ..... 3615

Oct. 28 ... Pub. L. 100-555 . Archeological Resources Protection  
 Act of 1979, Amendments ..... 3618

Oct. 31 ... Pub. L. 100-563 . Additional Appropriations for  
 Central Utah Project ..... 3619  
 John Muir Historic Site, boundary  
 change ..... 3623  
 Yosemite National Park, land use  
 limited ..... 3624

Nov. 3 ... Pub. L. 100-585 . Colorado Ute Indian Water Rights  
 Settlement Act of 1988 ..... 3625

Nov. 3 ... Pub. L. 100-588 . Archeological Resources Protection  
 Act of 1979, Amendments ..... 3634

Nov. 17 .. Pub. L. 100-675 . San Luis Rey Indian Water Rights  
 Settlement Act ..... 3635  
 Title II—All American Canal Lining Project ..... 3641

*Acts of the 101<sup>st</sup> Congress*

*1989*

Sept. 29 .. Pub. L. 101-101 . Energy and Water Development  
 Appropriations Act , 1990  
 (Extracts) ..... 3648

*1990*

May 24 .. Pub. L. 101-301 . Miscellaneous Amendments to  
 Indian Laws (Extract) ..... 3649

Aug. 10 .. Pub. L. 101-359 . Virginia Smith Dam and Calamus  
 Lake Recreation Area ..... 3650

Sept. 28 .. Pub. L. 101-397 . Water Resources Research Act  
 of 1984, Amendments ..... 3651

Oct. 18 ... Pub. L. 101-438 . Rio Grande American Canal  
 Extension Act of 1990 ..... 3655

Nov. 5 ... Pub. L. 101-514 . Energy and Water Development  
 Appropriations Act, 1991 (Extracts) ... 3659

## TABLE OF CONTENTS

Nov. 16	.. Pub. L. 101-602 . Fort Hall Indian Water Rights Act of 1990 .....	3663
Nov. 16	.. Pub. L. 101-618 . Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 .....	3669
	Title II—Truckee-Carson-Pyramid Lake Water Rights Settlement Act .....	3675
Nov. 28	.. Pub. L. 101-628 . Fort McDowell Indian Community Water Rights Settlement Act of 1990 .....	3708

*Acts of the 102<sup>nd</sup> Congress**1991*

Aug. 17	... Pub. L. 102-104 . Energy and Water Development Appropriations Act, 1992 (Extracts) .....	3725
Dec. 12	.. Pub. L. 102-231 . San Carlos Indian Irrigation Divestiture Act of 1991 .....	3727

*1992*

Mar. 5	... Pub. L. 102-250 . Reclamation States Emergency Drought Relief Act of 1991 .....	3738
Sept. 30	.. Pub. L. 102-374 . Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 .....	3747
Oct. 2	.... Pub. L. 102-377 . Energy and Water Development Appropriations Act of 1993 (Extracts) .....	3758
Oct. 23	... Pub. L. 102-441 . Jicarilla Apache Tribe Water Rights Settlement Act .....	3760
Oct. 24	... Pub. L. 102-486 . Energy Policy Act of 1992 ... (Extracts) .....	3766
Oct. 24	... Pub. L. 102-497 . Southern Arizona Water Rights Settlement Act Technical Amendments Act of 1992 .....	3800
	Title II—Ak-Chin Water Use Amendments Act of 1992 .....	3802
Oct. 30	... Pub. L. 102-575 . Reclamation Projects and Authorization Adjustment Act of 1992 .....	3803
	Title I—Buffalo Bill Dam and Reservoir, Wyoming ....	3812
	Title II—Central Utah Project Construction .....	3813

TABLE OF CONTENTS

xiii

Title III–Fish, Wildlife, and Recreation  
     Mitigation and Conservation . . . . . 3838

Title IV–Utah Reclamation Mitigation and  
     Conservation Account . . . . . 3857

Title V–Ute Indian Water Rights Settlement . . . . . 3859

Title VI–Endangered Species Act and  
     National Environmental Policy Act . . . . . 3865

Title VII–Leadville Mine Drainage Tunnel,  
     Colorado . . . . . 3866

Title VIII–Lake Meredith Salinity Control  
     Project, Texas and New Mexico . . . . . 3868

Title IX–Cedar Bluff Unit, Kansas . . . . . 3870

Title X–South Dakota Water Planning Studies . . . . . 3871

Title XI–Salton Sea Research Project, California . . . . . 3872

Title XII–Amendment to Sabine River Compact . . . . . 3873

Title XIII–Salt-Gila Aqueduct, Arizona . . . . . 3873

Title XIV–Vermejo Project Relief, New Mexico . . . . . 3873

Title XV–San Luis Valley Protection, Colorado . . . . . 3874

Title XVI–Reclamation Wastewater and  
     Groundwater Studies . . . . . 3875

Title XVII–Irrigation on Standing Rock Indian  
     Reservation, North Dakota . . . . . 3889

Title XVIII–Grand Canyon Protection Act of 1992 . . . 3890

Title XIX–Mid-Dakota Rural Water System . . . . . 3893

Title XX–Lake Andes Wagner/Marty II,  
     South Dakota . . . . . 3898

Title XXI–Rio Grande Floodway, San Acacia to  
     Bosque Del Apache Unit, New Mexico . . 3906

Title XXII–Sunnyside Valley Irrigation District,  
     Washington . . . . . 3906

Title XXIII–Platoro Reservoir and Dam,  
     San Luis Valley Project, Colorado . . . . . 3907

Title XXIV–Redwood County Water District,  
     California . . . . . 3910

Title XXV–United Water Conservation District,  
     California . . . . . 3911

Title XXVI–High Plains Groundwater Program . . . . . 3913

Title XXVII–Montana Irrigation Projects . . . . . 3914

Title XXVIII–Reclamation Recreation  
     Management Act . . . . . 3914

Title XXIX–San Juan Suburban Water District,  
     Central Valley Project, California . . . . . 3918

Title XXX–Western Water Policy Review . . . . . 3918

## TABLE OF CONTENTS

Title XXXI—Mountain Park Master Conservancy District, Oklahoma . . . . .	3923
Title XXXII—South Dakota Preservation and Restoration Trust . . . . .	3925
Title XXXIII—Elephant Butte Irrigation District, New Mexico . . . . .	3931
Title XXXIV—Central Valley Project Improve- ment Act . . . . .	3932
Title XXXV—Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Program, North Dakota . . . . .	3961
Title XXXVI—Sonoma Baylands Wetland Demon- stration Project, California . . . . .	3969
Title XXXVII—San Carlos Apache Tribe Water Rights Settlement, Arizona . . . . .	3971
Title XXXVIII—San Francisco Water Reclamation and Reuse Demonstration Project Act . . . . .	3986
Title XXXIX—Siphon Repair and Replacement . . . . .	3986
Title XL—National Historic Preservation Act Amendments . . . . .	3987

*Acts of the 103<sup>rd</sup> Congress**1993*

Oct. 28 . . . Pub. L. 103-126 . Energy and Water Development Appropriations Act, 1994 (Extracts) . . . . .	4006
--	------

*1994*

Feb. 12 . . . Pub. L. 103-211 . Emergency Supplemental Appropri- ations Act of 1994 (Extract) . . . . .	4008
May 31 . . . Pub. L. 103-263 . Northern Cheyenne Indian Reserved Water Rights Settlement Act Amendments . . . . .	4009
San Carlos Apache Tribe Water Rights Settlement Act Amendments . . . . .	4010
Oct. 31 . . . Pub. L. 103-434 . Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 . . . . .	4011
Title II—Auburn Indian Restoration . . . . .	4019
Title III—Central Utah Project (Warren Act Authority) . . . . .	4022

TABLE OF CONTENTS

Title IV—Mountain Park Project . . . . . 4023

Title V—San Angelo Federal Reclamation Project . . . . . 4025

Title VI—Shoshone Federal Reclamation Project . . . . . 4026

Title VII—Lake Powell . . . . . 4026

Title VIII—Mni Wiconi Rural Water Supply Project . . . . . 4026

Title IX—Belle Fourche Irrigation Project . . . . . 4034

Title X—Stagecoach Reservoir Project Act of 1994,  
Upper Yampa Water Conservancy  
Project . . . . . 4036

Title XI—Mancos Project . . . . . 4037

Title XII—Yakima River Basin Water Enhance-  
ment Project . . . . . 4039

Title XIII—Limitation on Application of Require-  
ment for Acquisitions By United States  
under Migratory Bird Conservation Act . . . . . 4056

Nov. 2 . . . Pub. L. 103-436 . Confederated Tribes of the Colville  
Reservation Grand Coulee Dam  
Settlement Act . . . . . 4057

Nov. 2 . . . Pub. L. 103-437 . United States Code Technical  
Improvement Act of 1994 (Extracts) . . . . . 4061

*Acts of the 104<sup>th</sup> Congress*

*1995*

July 28 . . . Pub. L. 104-20 . Colorado River Basin Salinity  
Control Act, Amendments . . . . . 4063

Nov. 13 . . Pub. L. 104-46 . Energy and Water Development  
Appropriations Act, 1996 (Extracts) . . . . . 4065

Dec. 21 . . . Pub. L. 104-66 . Federal Reports Elimination and  
Sunset Act of 1995 (Extracts) . . . . . 4069

*1996*

April 4 . . . Pub. L. 104-127 . Federal Agriculture Improvement  
and Reform Act of 1996 (Extracts) . . . . . 4075

May 15 . . . Pub. L. 104-143 . Trinity River Basin Fish and Wildlife  
Management Reauthorization Act  
of 1995 . . . . . 4077

May 24 . . . Pub. L. 104-147 . Water Resources Research Act of  
1984, Amendments . . . . . 4081

Sept. 30 . . Pub. L. 104-206 . Energy and Water Development  
Appropriations Act, 1997 (Extracts) . . . . . 4083

Oct. 9 . . . . Pub. L. 104-266 . Reclamation Recycling and Water  
Conservation Act of 1996 . . . . . 4087

Oct. 11 . . . Pub. L. 104-286 . The Central Utah Project  
Completion Act Amendments . . . . . 4095

## TABLE OF CONTENTS

Oct. 11 . . .	Pub. L. 104-298 .	Water Desalination Act of 1996 . . . . .	4096
Oct. 12 . . .	Pub. L. 104-303 .	Water Resources Development Act of 1996 (Extract) . . . . .	4100
Oct. 19 . . .	Pub. L. 104-318 .	Emergency Drought Relief Act of 1996 . . . . .	4102
Oct. 19 . . .	Pub. L. 104-326 .	Irrigation Project Contract Extension Act of 1996 . . . . .	4104

*Acts of the 105<sup>th</sup> Congress**1997*

April 14 . .	Pub. L. 105-9 . . .	Oroville-Tonasket Claim Settle- ment and Conveyance Act . . . . .	4106
July 18 . . .	Pub. L. 105-28 . .	Department of Energy Standardization Act of 1997 . . . . .	4112
Sept. 30 . .	Pub. L. 105-44 . .	“Clair Engle Lake” Redesignated “Trinity Lake” . . . . .	4113
Oct. 13 . . .	Pub. L. 105-62 . .	Energy and Water Development Appropriations Act, 1998 (Extracts) . . .	4114
Nov. 21 . .	Pub. L. 105-117 .	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Amendments . . . .	4116

*1998*

Oct. 27 . . .	Pub. L. 105-293 .	Irrigation Project Contract Extension Act of 1998 . . . . .	4118
Oct. 27 . . .	Pub. L. 105-295 .	Folsom Dam Temperature Control Devices Act . . . . .	4120
Oct. 30 . . .	Pub. L. 105-316 .	Canadian River Project Prepayment Act . . . . .	4122
Oct. 30 . . .	Pub. L. 105-327 .	Land and Water Conservation Fund Act of 1965, Amendment . . . . .	4125
Nov. 3 . . .	Pub. L. 105-351 .	Minidoka Project Conveyance of Facilities Act of 1998 . . . . .	4126
Nov. 3 . . .	Pub. L. 105-352 .	Fall River Water Users District Rural Water System Act of 1998 . . . . .	4129
Nov. 10 . .	Pub. L. 105-362 .	Federal Reports Elimination Act of 1998 (Extracts) . . . . .	4133
Nov. 12 . .	Pub. L. 105-372 .	Salton Sea Reclamation Act of 1998 . . . .	4136

July 14, 1983

3369

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATION ACT, 1984**

An Act making appropriations for energy and water development for the fiscal year ending September 30, 1984, and for other purposes. (Act of July 14, 1983, Public Law 98-50, 97 Stat. 247)

\* \* \* \* \*

**TITLE II—DEPARTMENT OF THE INTERIOR**

**BUREAU OF RECLAMATION**

\* \* \* \* \*

**CONSTRUCTION PROGRAM**

\* \* \* \* \*

**[San Luis Unit—Final point of discharge for the interceptor drain.]**—The final point of discharge for the interceptor drain for the San Luis Unit shall not be determined until development by the Secretary of the Interior and the State of California of a plan, which shall conform with the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters:

\* \* \* \* \*

**[Twin Falls Canal Company, Twin Falls County, Idaho]**—The amount herein appropriated not to exceed \$20,000 shall be available to initiate a rehabilitation and betterment program with the Twin Falls Canal Company, Twin Falls County, Idaho, to rehabilitate facilities under the Act of October 7, 1919 (63 Stat. 724; 43 U.S.C. §504.), as amended, to be repaid in full by the lands served and under conditions satisfactory to the Secretary of the Interior:

EXPLANATORY NOTE

**Reference in the Text.** The Act of referenced above does not appear herein. October 7, 1919 (63 Stat. 724; 43 U.S.C. §504.)

**[Velarde Community Ditch Project, New Mexico—Nonreimbursable.]**—The amount herein appropriated \$3,000,000 shall be available to enable the Secretary of the Interior to begin work on rehabilitating the Velarde Community Ditch Project, New Mexico, in accordance with the

July 14, 1983

3370 ENERGY AND WATER APPROPRIATION ACT, 1984

Federal Reclamation Laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto; 43 U.S.C. § 371 note.) for the purposes of diverting and conveying water to irrigated project lands. The principal features of the project shall consist of improvements such as the installation of more permanent diversion dams and headgates, wasteways, arroyo siphons, and concrete lining of ditches in order to improve irrigation efficiency, conserve water, and reduce operation and maintenance costs. The cost of the rehabilitation will be nonreimbursable and constructed features will be turned over to the appropriate entity for operation and maintenance. (97 Stat. 251)

\* \* \* \* \*

**Sec. 205. [Twin Buttes Dam, Texas—Nonreimbursable.]**—The cost of foundation treatment, drainage, and instrumentation work planned or under way at Twin Buttes Dam, Texas, shall be nonreimbursable under Federal reclamation laws. (97 Stat. 254)

\* \* \* \* \*

**[Short title.]**—This Act may be cited as the "Energy and Water Development Appropriation Act, 1984". (97 Stat. 262)

EXPLANATORY NOTES

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

**Legislative History.** H.R. 3132, Public Law 98-50 in the 98<sup>th</sup> Congress. H.R. Repts. No. 98-217 (Appropriations) and No. 98-272 (Conference). S. Rept. No. 98-153 (Appropriations). Considered and passed House June 6, 7, 1983. Considered and passed Senate,

amended June 21, 22, 1983. House disagreed to Senate amendments June 23, 1983. House agreed to conference report; receded from its disagreement and concurred in certain Senate amendments and in others with amendments June 29, 1983. Senate agreed to conference report and concurred in House amendments.

July 28, 1983

3371

## QUITCLAIM DEED TO THE CITY OF AMERICAN FALLS

An Act to authorize and direct the Secretary of the Interior to convey, by quitclaim deed, all right, title, and interest of the United States in and to certain lands that were withdrawn or acquired for the purpose of relocating a portion of the city of American Falls out of the area flooded by the American Falls Reservoir. (Act of July 28, 1983, Public Law 98-61, 97 Stat. 298)

**[Section 1. Quitclaim deed to the City of American Falls authorized.]**—The Secretary of the Interior is hereby authorized and directed to convey by quitclaim deed to the city of American Falls, Idaho, without cost, the following real property located within or adjacent to the city limits of said city of American Falls, reserving all right-of-way and oil and gas in land to the United States:

(a) The area identified as the Campbell Stebbins Park, containing approximately 41.5 acres, including the park area located between the Oregon Trail Highway and the Oregon Short Line Railroad, and the area identified as a Public Square, containing approximately 8.8 acres, all as shown on the official plat of the Reclamation Addition to the city of American Falls approved October 18, 1923, and recorded in the county of Power, Idaho, as instrument numbered 32042.

(b) Block 44 of the original townsite of American Falls; containing approximately 3.3 acres.

(c) A tract of land containing 11.7 acres, more or less, described as follows:

Beginning at the northwest corner of the southwest quarter of section 21, township 7 south, range 31 east, Boise meridian;

thence south 45 degrees 16 minutes east, a distance of 1,870.3 feet, more or less, to the southeast corner of said southwest quarter;

thence north 58 degrees 28 minutes west, a distance of 96.3 feet;

thence north 68 degrees 17 minutes west, a distance of 1,339.2 feet, more or less, to a point on the west section line of said section 21, and said point being 548.2 feet north of the southwest corner of said section;

thence north along the west section line a distance of 770.5 feet, more or less, to the northwest corner of the southwest quarter of said section 21, the point of beginning.

(d) A tract of land containing 8.79 acres more or less in the south half of the southwest quarter, section 28, township 7 south, range 31 east, Boise meridian, Idaho, and more particularly described as follows:

Beginning at the southwest corner of said section 28; thence north 44 degrees and 38 minutes east, 1,868.6 feet to the 16/17 corner of said section;

thence east along the north boundary of the southeast quarter southwest quarter of said section 28, 367.2 feet to a point;

thence south 324.9 feet to a point;

thence north 89 degrees and 59 minutes west, 92.8 feet to a point;

July 28, 1983

3372 QUITCLAIM DEED TO THE CITY OF AMERICAN FALLS

thence south 49 degrees and 23 minutes west, 361.9 feet to a point;  
thence south 78 degrees and 34 minutes west, 708 feet to a point;  
thence south 26 degrees and 55 minutes west, 333.7 feet to a point;  
thence south 61 degrees and 51 minutes west, 271.6 feet to a point;  
thence south 43 degrees and 29 minutes west, 280.3 feet to a point on the south boundary of said section 28;

thence south 89 degrees and 59 minutes west along the south boundary of said section 28, 34.9 feet to the place of beginning.

(e) A tract of land containing 8.0 acres, more or less, located in the west half of the southwest quarter, section 28, township 7 south, range 31 east, Boise meridian, Idaho, and more particularly described as follows:

Beginning at the southwest corner of section 28;

thence north 44 degrees 38 minutes east, a distance of 1,886.6 feet to the northeast corner of the southwest quarter southwest quarter, of section 28;

thence north a distance of 1,320 feet to the northeast corner of the northwest quarter southwest quarter of section 28;

thence west, a distance of 30 feet to a point on the east edge of Hillcrest Avenue;

thence southwesterly along a curve on the side of Hillcrest Avenue a distance of 2,955 feet to a point on line between sections 28 and 29;

thence south 65.0 feet to the southwest corner of section 28, the place of beginning.

Such property shall be conveyed subject to the reservation of rights-of-way for ditches, canals, and pipelines constructed by the authority of the United States and to other existing rights-of-way of record. The conveyance of such property shall contain a reservation to the United States of all oil and gas in the land, together with the right to prospect for, mine, and remove the same under such regulation as the Secretary of the Interior may prescribe. (97 Stat. 299)

EXPLANATORY NOTES

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

**Legislative History.** S. 459, Public Law 98-61 in the 98<sup>th</sup> Congress. Reported in the Senate from Energy and Natural Resources; S. Rept.

No. 98-5. Passed Senate Mar. 2, 1983. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-270. Passed House July 18, 1983.

July 30, 1983

3373

## SUPPLEMENTAL APPROPRIATIONS ACT OF 1983

An Act making supplemental appropriations for the fiscal year ending September 30, 1983, and for other purposes. (Act of July 30, 1983, Public Law 98-63 , 97 Stat. 301)

\* \* \* \* \*

### TITLE IV

\* \* \* \* \*

#### DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION GENERAL PROVISIONS

\* \* \* \* \*

**[Feasibility study for Prairie Bend unit, Pick-Sloan Missouri River Basin program, Dawson, Buffalo, and Hall counties, Nebraska, authorized.]**—The Secretary of the Interior is hereby authorized to engage in a feasibility study for the Prairie Bend unit, Pick-Sloan Missouri River Basin program, located in Dawson, Buffalo, and Hall Counties in Nebraska for irrigation, stabilization of ground-water levels, enhancement of water quality, small community and rural domestic water supplies, management of fish and wildlife habitat, public outdoor recreation, flood control, and other purposes determined to be appropriate. Such feasibility study shall include a detailed report on any effects the proposed project may have on wildlife habitat, including habitat of the sandhill crane and the endangered whooping crane. Such feasibility study shall also develop alternative water management plans that are consistent with the Endangered Species Act and the Migratory Bird Treaty Act. Before funds are expended for the feasibility study, the State of Nebraska, or other non-Federal entity, shall agree to participate in the study and to share in the cost of the study. The non-Federal share of the costs may be partly or wholly in the form of services directly related to the conduct of the study. (97 Stat. 314)

**[Dallas Creek Project—Allocated municipal and industrial costs exceeding \$38,000,000—Nonreimbursable.]**—In accordance with the repayment contract for the Dallas Creek participating project of the Upper Colorado River storage project, entered into January 14, 1977, and entitled "Repayment Contract Between the United States of America and the Tri-County Water Conservancy District", the portion of the costs of such project, including interest on construction costs, allocated to municipal and industrial use which exceeds \$38,000,000 shall not be reimbursable. (97 Stat. 315)

July 30, 1983

3374 SUPPLEMENTAL APPROPRIATIONS ACT OF 1983

**[McGee Creek Reservoir—Access facilities to recreational areas nonreimbursable.]**—To provide adequate access to the McGee Creek recreation areas, Wildlife Management Area, and Natural Scenic Recreation Area for use and enjoyment by the general public of those facilities, the Secretary of the Interior is authorized to secure right-of-way, design and construct or otherwise improve two existing county access roads (1) westside road beginning at the existing county road extending from Oklahoma State Highway 3 near the community of Lane, Oklahoma, and extending adjacent to the McGee Creek Reservoir and terminating at the existing county road extending from Oklahoma State Highway 43 in the vicinity of Stringtown, Oklahoma, a distance of some 19 miles; (2) eastside road beginning at State Highways 3 and 7 near Center Point, Oklahoma, and extending northward to the upper end of McGee Creek Reservoir, a distance of some 11 miles. The westside road will be constructed with a 24-foot berm and 20-foot paved surface and the east side constructed with a 28-foot berm and 24-foot paved surface. Both roads will have a minimum 6-inch gravel base and be paved with all weather asphaltic surface. The cost for the facilities authorized by this Act shall be nonreimbursable. (97 Stat. 315)

**[Repayment deferment—Special program under title 7, C.F.R. 770.]**—The Secretary of the Interior is authorized, when he deems it appropriate, to defer over the remaining term of any repayment contract or for a period of five years, whichever is less, the 1983 water service and repayment contract obligations for capital and operation and maintenance costs associated with federally constructed or federally assisted projects to reflect the percentage of acreage removed from cultivation pursuant to the "Special program for Corn, Grain, Sorghum, Upland Cotton, and Rice" under title 7 of the Code of Federal Regulations part 770 (48 FR 1696), and any regulations supplementary thereto or amendatory thereof. Such deferment of payments shall not be deemed a "supplemental or additional benefit" within the meaning of section 203(a)(2) of the Reclamation Reform Act of 1982. (97 Stat. 315)

**[Feasibility studies of Pilot Butte powerplant, Riverton Unit, Fremont County Wyoming are authorized.]**—The Secretary of the Interior is hereby authorized to engage in feasibility studies of the following proposals:

- (1) Pilot Butte powerplant, Riverton unit, located in Fremont County, Wyoming;
- (2) Siletz River Basin project, located in Lincoln and Polk Counties, Oregon;
- (3) Water conservation and efficient use program, All-American Canal relocation project, located in Imperial County, California; and
- (4) Gibson Dam powerplant, located on the Sun River in Lewis and Clark Counties, Montana. (97 Stat. 315)

**[Joint study with the State of Nebraska authorized—Norden Dam alternatives, O'Neill unit, Pick-Sloan Missouri River Basin program, Nebraska.]**—The Secretary of the Interior shall, under the general investigations

July 30, 1983

SUPPLEMENTAL APPROPRIATIONS ACT OF 1983 3375

authority, engage in a joint, State-led study with the State of Nebraska, which will consult with its appropriate subdivisions, of cost-effective alternatives to the Norden Dam, O'Neill unit of the Pick-Sloan Missouri River Basin program, Nebraska; and shall use available funds to initiate such study. The study period shall not exceed 18 months, starting with enactment of this Act. No funds shall be expended for any construction activity for the Norden Dam, O'Neill unit prior to the completion of this study. (97 Stat. 316)

\* \* \* \* \*

**[Short title.]**—This Act may be cited as the "Supplemental Appropriations Act, 1983". (97 Stat. 364)

EXPLANATORY NOTES

**Not Codified.** The selected paragraphs of Title IV of this Act are not codified.

**Legislative History.** H.R. 3069 (H.J. Res. 338) Public Law 98-68 in the 98<sup>th</sup> Congress. Reported in the House from Appropriations; H.R. Repts. No. 98-207 and No. 98-308 (Conference). Reported in the Senate from Appropriations; S. Rept. No. 98-148. Passed the House May 25, 1983. Considered and passed

the Senate June 9, 10, 14-16, 1983, amended. House agreed to conference report July 28, 1983. House concurred in certain Senate amendments and in others with amendments and insisted on its disagreement to certain Senate amendments. Senate agreed to conference report, concurred in House amendments, and receded from its amendments in disagreement July 29, 1983.

November 17, 1983

3376

## BELLE FOURCHE IRRIGATION PROJECT REHABILITATION

An Act to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes.  
(Act of November 17, 1983, Public Law 98-157, 97 Stat. 989, as amended by the Act of October 31, 1994, Public Law 103-434, 108 Stat. 4546)

**[Section 1. General plan modified—Rehabilitation or replacement of certain facilities included—Water conservation—State and Federal cost sharing limited.]—**(a) The general plan for the Belle Fourche project, South Dakota, heretofore authorized for construction by the Secretary of the Interior, May 10, 1904, pursuant to the Reclamation Act of 1902 (32 Stat. 388, 43 U.S.C. § 391.), is modified to include construction, betterment of works, water conservation, recreation, and fish and wildlife conservation and development. As so modified, the general plan is reauthorized under the designation "Belle Fourche unit" of the Pick-Sloan Missouri Basin program.

(b)(1) In addition to the activities authorized under subsection (a), the general plan for the Belle Fourche project is modified to include the following:

(A) Rehabilitation of the following major water control structures:

(i) The Whitewood Siphon.

(ii) 2 Belle Fourche dam outlets.

(B) Lining at South Canal and rehabilitation of Johnson Lateral for water conservation.

(C) Replacement or rehabilitation of deteriorated canal bridges.

(D) Provision of minor lateral rehabilitation and contract support work by the Belle Fourche irrigation district.

(E) Conduct of a detailed study of project-wide water use management and implementation of improved management practices for the purpose of achieving optimal conservation of water supplies.

(2) The Federal share of the cost of activities under this subsection may not exceed \$10,500,000. The State share of those costs may not exceed \$4,000,000, and shall be paid concurrently with Federal expenditures for activities under this subsection. (97 Stat. 989, 108 Stat. 4546)

### EXPLANATORY NOTE

**1994 Amendment.** Section 901(a) of the Act of October 31, 1994, (Public Law 103-434, 108 Stat. 4546) amended the first section of this Act to read as it appears above by designating the

first section "Section 1. (a)" and adding the subsection "(b)". Section 901 of the 1994 Act appears Volume V at page 4034.

November 17, 1983

BELLE FOURCHE REHABILITATION

3377

**Sec. 2. [Amendatory contract—Term not to exceed 40 years—Water rates.]—**(a) The Secretary of the Interior (hereinafter referred to as the "Secretary"), is authorized to negotiate and execute an amendatory repayment contract with the Belle Fourche irrigation district covering all lands of the existing Belle Fourche project. This contract shall replace all existing contracts between the Belle Fourche irrigation district and the United States.

(b) The period of repayment of the construction and rehabilitation and betterment costs allocated to irrigation and assigned to be repaid by the irrigation water users shall be not more than forty years from and including July 1, 1995.

(c)(1) Before July 1, 1995, the rates of charge to land class in the unit shall continue to be as established in the November 29, 1949, repayment contract with the district, as subsequently amended and supplemented. On and after July 1, 1995, such rates of charge and assessable acreage shall, subject to subsection (d), be in accordance with the amortization capacity and classification of unit lands as then determined by the Secretary.

(2) After final completion of the rehabilitation and betterment program authorized by this Act, and at intervals agreed to by the Secretary and the Belle Fourche irrigation district, the rates of charge and assessable acreage may be amended as determined necessary by the Secretary. (97 Stat. 989, 108 Stat. 4547)

EXPLANATORY NOTE

**1994 Amendment.** Subsection 901 (b) of the Act of October 31, 1994, (Public Law 103-434, 108 Stat. 4546) amended subsection 2(b) by striking the phrase "the year in which such amendatory repayment contract is executed" and inserting "July 1, 1995." Further, new language was provided by subsection 901(c) of the 1994 Act for subsection 2(c) of this Act. Prior to amendment, subsection 2(c) read as follows: "During the period required to complete the rehabilitation and betterment

program and other water conservation works, the rates of charge to land class in the unit shall continue to be as established in the November 29, 1949, repayment contract with the district, as subsequently amended and supplemented; thereafter, such rates of charge and assessable acreage shall be in accordance with the amortization capacity and classification of unit lands as then determined by the Secretary." Section 901 of the 1994 Act appears in Volume V at page 4034.

**Sec. 3. [Application of net revenues—Repayment of unassigned irrigation costs.]—**(a) All miscellaneous net revenues of the Belle Fourche unit shall accrue to the United States and shall be applied against irrigation costs not assigned to be repaid by irrigation water users.

(b) Construction and rehabilitation and betterment costs of the Belle Fourche unit allocated to irrigation and not assigned to be repaid by the irrigation water users nor returned from miscellaneous net revenues of the unit shall be returnable from net revenues of the Pick-Sloan Missouri Basin program within fifty years from and including the year in which the amendatory contract authorized by this Act is executed.

November 17, 1983

3378

BELLE FOURCHE REHABILITATION

**Sec. 4. [Recreation and fish and wildlife benefits.]**—The provision of lands, facilities, and project modifications which furnish recreation and fish and wildlife benefits in connection with the Belle Fourche unit shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213, 16 U.S.C. § 460/12 note), as amended.

EXPLANATORY NOTE

**Reference in the Text.** The Federal Water Project Recreation Act, Act of July 9, 1965 (Public Law 89-72, 79 Stat. 213) appears in Volume III at page 1820. Amendments to the Act by section 77 of the Act of March 7, 1974 (Public Law 93-251, 88 Stat. 12; 16 U.S.C. § 460/12 note.) appear in Volume IV at page 2838. Extracts from the Act, as amended, appear in Supplement I from page S389 through page S395. Amendments and annotations of the 1965 Act appear in Supplement II at page S921.

**Sec. 5. [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 costs 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. (97 Stat. 989)

**Sec. 6. [Contracts.]**—The Secretary is authorized to amend existing contracts and enter into additional contracts as may be necessary to implement and facilitate any future agreement between the Belle Fourche irrigation district and non-Federal entities involving the sale of Belle Fourche project water for use by such non-Federal interest for other than irrigation purposes: *Provided*, That the net proceeds from such transactions between the Secretary, the Belle Fourche irrigation district, and such non-Federal interest shall be paid to the United States as reimbursement of the cost of the works authorized by this Act, that such transactions are not in violation of applicable State laws, and that such transactions shall be subject to the consent and conditions of the State of South Dakota to such water use by such non-Federal interest in accordance with the laws of South Dakota and the provisions of the Belle Fourche River Compact between the States of Wyoming and South Dakota to which the consent of Congress was given in the Act of February 26, 1944 (ch. 64, 58 Stat. 94).

**Sec. 7. [Appropriation authorization.]**—(a) There is hereby authorized to be appropriated beginning October 1, 1984, for the rehabilitation and betterment of the irrigation facilities of the Belle Fourche unit and recreation and fish and wildlife measures as authorized by this Act, the sum of \$42,000,000 (based on January 1981 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.

(b) In addition to amounts authorized under subsection (a), for activities under section 1(b) there are authorized to be appropriated \$10,500,000, plus or minus such amounts (if any) as may be justified by reason of ordinary fluctuations in

November 17, 1983

BELLE FOURCHE REHABILITATION

3379

construction cost indexes applicable to types of construction conducted under that section. (97 Stat. 990, 108 Stat. 4547)

EXPLANATORY NOTE

**1994 Amendment.** Section 901(d) of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4546) amended "Sec. 7" above by (1) inserting "(a)" after "Sec. 7"; and (2) by adding at the end subsection "7(b)", as it appears above. Section 901 of the 1994 Act appears in Volume V at page 4034.

**Sec. 8. [Spending authority.]**—Any new spending authority described in subsection (c)(2)(A) or (B) of section 401 of the Congressional Budget Act of 1974 (2 U.S.C. § 651) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts. (97 Stat. 990)

EXPLANATORY NOTES

**Not Codified.** This Act is not codified in the U.S. Code. Senate from Energy and Natural Resources; S. Rept. No. 98-138. Passed Senate June 15, 1983.

**Reference in the Text.** Extracts from the Congressional Budget Act of 1974, Act of July 12, 1974 (Titles I-IX of Public Law 93-344, 88 Stat. 298) appear in Supplement I at page S431. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-415, considered and passed House, amended, October 31, November 1, 1983. Senate concurred in House amendments November 3, 1983. Approved November 17, 1983.

**Legislative History.** S. 448, Public Law 98-157 in the 98<sup>th</sup> Congress. Reported in the

December 1, 1983

3380

**ORCHARD AND LAKE SHORE DRIVES, LAKE LOWELL, BOISE  
PROJECT, IDAHO—LAND CONVEYANCE**

An Act to provide for the conveyance of certain Federal lands adjacent to Orchard and Lake Shore Drives, Lake Lowell, Boise project, Idaho. (Act of December 1, 1983, Public Law 98-196, 97 Stat. 1352)

**Section 1. [Certain Federal lands conveyance authorized.]**—The Secretary of the Interior (hereinafter referred to as the "Secretary") is hereby authorized to convey all right, title, and interest, except as reserved herein, to certain small tracts of Federal lands located adjacent to Orchard and Lake Shore Drives, Lake Lowell, Boise project, Idaho, to the adjacent landowners.

**Sec. 2. [Conveyance to adjacent landowners only.]**—Such conveyances shall be made by the Secretary only to the adjacent landowners, and shall be made within one year from the date of his receipt of a proper application from such landowners. Applicants for such conveyances must pay the fair market value of the lands as of the date of the conveyance, including administrative costs and the costs to the Government of conducting the necessary land surveys and preparing the legal descriptions of the land to be conveyed. In determining the fair market value of the lands, the Secretary shall not include the value of any improvements made to the lands by the adjacent landowners or their predecessors.

**Sec. 3. [Mineral rights reserved.]**—All conveyances made pursuant to this Act shall reserve to the United States all mineral deposits in the lands and shall assure that the right to mine and remove such minerals is subservient to the surface rights granted in the conveyances.

EXPLANATORY NOTES

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

**Legislative History.** S. 577, Public Law 98-196 in the 98<sup>th</sup> Congress. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 98-7. Passed Senate March 2, 1983.

Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-269. Passed House, amended July 18, 1983. Senate concurred in House amendments November 18, 1983. Approved December 1, 1983.

March 22, 1984

3381

## **WATER RESOURCES RESEARCH ACT OF 1984**

An Act to authorize an ongoing program of water resources research, and for other purposes. (Act of March 22, 1984, Public Law 98-242, 98 Stat. 97, as amended by the Act of September 28, 1990, Public Law 101-397, 104 Stat. 852, Act of December 21, 1995, Public Law 104-66, 109 Stat. 707, and the Act of May 24, 1996, Public Law 104-147, 110 Stat. 1375)

### **TITLE I**

**Sec. 101. [Short title.]**—This Act may be cited as the "Water Resources Research Act of 1984". (42 U.S.C. § 10301 note.)

**Sec. 102. [Congressional findings and declarations.]**—The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the people;

(2) the management of water resources is closely related to maintaining environmental quality, productivity of natural resources and agricultural systems, and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(7) the Nation must provide programs to strengthen research and associated graduate education because the 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;

(8) long-term planning and policy development are essential to ensure the availability of an abundant supply of high quality water for domestic and other uses; and

(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources. (98 Stat. 97; 42 U.S.C. § 10301.)

March 22, 1984

3382 WATER RESOURCES RESEARCH ACT OF 1984

EXPLANATORY NOTE

**1996 Amendment.** Section 1 of the Act of May 24, 1996 (Public Law 104-147, 110 Stat. 1375) amended section 102 as follows: (1) in paragraph (2), by inserting ", productivity of natural resources and agricultural systems," after "environmental quality";  
(2) in paragraph (6), by striking "and" at the end;

(3) in paragraph (7), by striking the period at the end and inserting "; and" [editorially omitted as "; and" appears to be unnecessary at the end of (7)]; and

(4) by adding at the end paragraphs (8) and (9) as they appear above.

The 1996 Act appears in Volume V at page 4081.

**Sec. 103. [Water resources science and technology.]**—It is the purpose of this Act to assist the Nation and the States in augmenting their water resources science and technology as a way to—

(1) assure supplies of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;

(2) discover practical solutions to the Nation's water and water resources related problems, particularly those problems related to impaired water quality;

(3) assure the protection and enhancement of environmental and social values in connection with water resources management and utilization;

(4) promote the interest of State and local governments as well as private industry in research and the development of technology that will reclaim waste water and to convert saline and other impaired waters to waters suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) promote more effective coordination of the Nation's water resources research program;

(6) promote the development of a cadre of trained research scientists, engineers, and technicians for future water resources problems; and

(7) encourage long-term planning and research to meet future water management, quality, and supply challenges. (98 Stat. 97, 104 Stat. 852, 110 Stat. 1376; 42 U.S.C. § 10302.)

EXPLANATORY NOTES

**1996 Amendment.** Section 2 of the Act of May 24, 1996 (Public Law 104-147, 110 Stat. 1375) amended section 103 of this Act as follows:

(1) in paragraph (5)—(A) by striking "to"; and (B) by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:  
"(7) encourage long-term planning and research to meet future water management, quality, and

supply challenges".

The 1996 Act appears in Volume V at page 4081.

**1990 Amendment.** Section 1(a) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 103(5) by deleting "coordinate more effectively" and inserting in lieu thereof. "to promote more effective coordination of".

The 1990 Act appears in Volume V at page 3651.

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984

3383

**Sec. 104. [Research and development.]**—(a) Subject to the approval of the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") under this section, one water resources research and technology institute, center, or equivalent agency (hereafter in this Act referred to as the "institute") may be established in each State (as used in this Act, the term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands and the Federated States of Micronesia) at a college or university which was 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 at some other institution designated by act of the legislature of the State concerned. If there is more than one such college or university in a State established in accordance with such Act of July 2, 1862, the institute in such State shall, in the absence of a designation to the contrary by act of the legislature of the State, be established at the one such college or university designated by the Governor of the State. Two or more States may cooperate in the establishment of a single institute or regional institute, in which event the sums otherwise allocated to institutes in each of the cooperating States shall be paid to such single or regional institute.

EXPLANATORY NOTES

**1990 Amendment.** Section 1(b) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 104(a) by changing "Trust Territory of the Pacific Islands" to "Federated States of Micronesia". The 1990 Act appears in Volume V at page 3651.

**Reference in the Text.** The Act approved

July 2, 1862 (ch. 130, 12 Stat. 503, as amended, popularly known as the "Morrill Act"; 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" referred to above does not appear herein.

(b) Each institute shall—

(1) plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists, engineers, and technicians, (c) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and

(2) cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination, and graduate training in order to develop a statewide program designed to resolve State and regional water and related land problems.

Each institute shall also cooperate closely with other institutes and other

March 22, 1984

3384 WATER RESOURCES RESEARCH ACT OF 1984

organizations in the region to increase the effectiveness of the institutes and for the purpose of promoting regional coordination.

EXPLANATORY NOTE

**1990 Amendment.** Section 1(c) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 104(b) by inserting in the last sentence after the phrase "for the purpose of" the following: "promoting". Section 1(d) of the 1990 Act amended section 104(b)(1) to read as it appears above. The 1990 Act appears in Volume V at page 3651.

(c) From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than 2 non-Federal dollars for every 1 Federal dollar such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.

EXPLANATORY NOTES

**1996 Amendment.** Section 3 of the Act of May 24, 1996 (Public Law 104-147, 110 Stat. 1376) amended section 104(c) of this Act by striking "one non-Federal dollar" and all that follows through "thereafter" and inserting "2 non-Federal dollars for every 1 Federal dollar". The 1996 Act appears in Volume V at page 4081.

**1990 Amendment.** Section 1(e) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 104(c) by deleting the period at the end thereof and inserting in lieu thereof "and thereafter, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.", as it appears above. The 1990 Act appears at page 3651.

(d) Prior to and as a condition of the receipt each fiscal year of funds appropriated under subsection (f) of this section, each institute shall submit to the Secretary for his approval a water research program that includes assurances, satisfactory to the Secretary, that such program was developed in close consultation and collaboration with the director of that State's department of water resources or similar agency, other leading water resources officials within the State, and interested members of the public. The program described in the preceding sentence shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the State and Nation, and shall encourage regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

(e) The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 5 years to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting, and arranging for research warrants its continued support under this section, as a result of any such evaluation, the Secretary determines that an

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984 3385

institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualifications are reestablished to the satisfaction of the Secretary.

EXPLANATORY NOTE

**1990 Amendment.** Section 1(f) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 104(e) to read as it appears above. Prior to amendment, section 104(e) read as follows:

"(e)(1) The Secretary shall establish procedures for a careful and detailed evaluation of each institute to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting and arranging for research warrants its continued support under this section in the national interest. The evaluation of each institute shall be made by a team of knowledgeable individuals including employees of the Department of the Interior, university faculty or administrators, water research institute directors from other institutes, State or local water resource agency personnel, and private citizens selected for this purpose. The Secretary may also secure the cooperation of the National Research Council/National Academy of Science. The evaluation team shall visit the institute and shall assess the scientific quality of its research program, the potential effectiveness of its research in meeting water resource needs, and the demonstrated performance in making research results available to users in the State

and elsewhere. Criteria for making the determination that an institute is an effective instrument for water resources research shall include the following: accreditation in sufficient disciplines to successfully mount a multidisciplinary research program; sufficient resources, including laboratory, library, computer, and support facilities; a sufficiently close administrative relation and physical proximity to the university and to all the parts of it needed to provide an effective working relationship with researchers in a wide range of disciplines; and institutional commitment to the support and continuation of an effective water research program.

(2) The Secretary shall arrange for each of the institutes supported under this section to be evaluated under this subsection within two years after its establishment and to be reevaluated at intervals not to exceed four years. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualification is reestablished to the satisfaction of the Secretary." (98 Stat. 99)

The 1990 Act appears in Volume V at page 3651.

(f)(1) For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary the sum of \$5,000,000 for fiscal year 1996, \$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000 such sums to remain available until expended.

(2) Any sums appropriated under this subsection but which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary and available for obligation during the succeeding fiscal year under the terms of section 104(g) of this Act.

EXPLANATORY NOTES

**1996 Amendment.** Section 4 of the Act of May 24, 1996 (Public Law 104-147, 110 Stat.

1376) amended section 104(f)(1) of this Act by striking "of \$10,000,000 for each of the fiscal

March 22, 1984

3386 WATER RESOURCES RESEARCH ACT OF 1984

years ending September 30, 1989, through September 30, 1995," and inserting "of \$5,000,000 for fiscal year 1996, \$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000". The 1996 Act appears in Volume V at page 4081.

**1990 Amendment.** Section 1(g) of the Act of September 28, 1990 (Public Law 101-397, 104

Stat. 852) amended section 104(f)(1) by deleting "September 30, 1985, through September 30, 1989" and inserting in lieu thereof "September 30, 1989, through September 30, 1995,".

Section 1(h) of the 1990 Act amended section 104(f)(2) by deleting "section 106 of this Act" and inserting in lieu thereof "section 104(g) of this Act". The 1990 Act appears in Volume V at page 3651.

(g)(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of \$3,000,000 for each of fiscal years 1996 through 2000 only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which relate to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals.

**(h) [Coordination.]—(1) [In general.]—**To carry out this Act, the Secretary—

(A) shall encourage other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to use and take advantage of the expertise and capabilities that are available through the institutes established by this section, on a cooperative or other basis;

(B) shall encourage cooperation and coordination with other Federal programs concerned with water resources problems and issues;

(C) may enter into contracts, cooperative agreements, and other transactions without regard to section 3709 of the Revised Statutes (41 § U.S.C. 5);

(D) may accept funds from other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to pay for and add to grants made, and contracts entered into, by the Secretary;

(E) may promulgate such regulations as the Secretary considers appropriate; and

(F) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this Act.

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984 3387

**(2) [Report to Congress required.]**—The Secretary shall report to Congress annually on coordination efforts with other Federal departments, agencies, and instrumentalities under paragraph (1).

**(3) [Relationship to State rights.]**—Nothing in this Act shall preempt the rights and authorities of any State with respect to its water resources or management of those resources. (98 Stat. 98, 104 Stat. 852-853, 110, Stat 1376-1377; 42 U.S.C. § 10303.)

EXPLANATORY NOTES

**1996 Amendment.** Section 5 of the Act of May 24, 1996 (Public Law 104-147, 110 Stat. 1376) amended section 104(g)(1) of this Act by striking "of \$5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995" and inserting "of \$3,000,000 for each of fiscal years 1996 through 2000".

Section 6 of the 1996 Act amended section 104 of this Act by adding at the end subsection

(h) as it appears above. The 1996 Act appears in Volume V at page 4081.

**1990 Amendment.** Section 1(m) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 104 by adding subsections (g)(1) and (2) as they appear above. The 1990 Act appears in Volume V at page 3651.

**Sec. 105. (a) [Grants.]**—(1) In addition to the grants authorized by section 104 of this Act, the Secretary is authorized to make grants, on a dollar-for-dollar matching basis, to the institutes established under such section, as well as other qualified educational institutions, private foundations, private firms, individuals, and agencies of local or State government for research concerning any aspect of a water resource-related problem which the Secretary may deem to be in the national interest. Such grants shall be made with such advice and review by peer or other expert groups of appropriate interdisciplinary composition as the Secretary deems appropriate on the basis of the merits of the project and the need for the knowledge such project is expected to produce upon completion.

(2) Research funded under this section should to the extent possible utilize the best qualified graduate students so the Nation profits from the education and training benefits resulting from the use of the latest in technological developments in solving water problems.

(3) *[Repealed.]*—

EXPLANATORY NOTE

**1990 Amendment.** Section 1(I) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) repealed section 105(a)(3). Originally, 105(a)(3) read as follows: "In cases where the Secretary determines, in accordance with criteria established by him, that research under

this section is of a basic nature which would not otherwise be undertaken, the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1) of this subsection." The 1990 Act appears in Volume V at page 3651.

March 22, 1984

3388 WATER RESOURCES RESEARCH ACT OF 1984

(b) Each application for a grant under this section shall 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 as well as to the region and State concerned, its relation to other research projects previously or currently being pursued, and the extent to which it will provide an opportunity for the training of water resources scientists.

(c) There is authorized to be appropriated to the Secretary the sum of \$10,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1995, such sums to remain available until expended. (98 Stat. 100, 104 Stat. 853; 42 U.S.C. § 10304.)

EXPLANATORY NOTE

**1990 Amendment.** Section 1(j) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 105(c) by: (1) striking "\$20,000,000" and inserting in lieu thereof, "\$10,000,000"; and (2) striking "1989" and inserting in lieu thereof, "1995". The 1990 Act appears in Volume V at page 3651.

**Sec. 106. [Grants—Matching funds.]—(a)(1)** The Secretary shall make grants in addition to those authorized under sections 104 and 105 for technology development concerning any aspect of water resources including water-related technology which the Secretary may deem to be of State, regional, or national importance. Activities funded under this section may be carried out by educational institutions, private firms, foundations, individuals, or agencies of State or local government. Care shall be taken to protect proprietary information of private individuals or firms associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the information transfer and technology needs of the Nation. However, in the case of institutes established by section 104 of this Act no match greater than that required under section 104 may be required.

(b) Each application for a grant under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, facilities of the organization performing any technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued.

(c) There is authorized to be appropriated to the Secretary the sum of \$6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1990, through September 30, 1995; such sums to remain available until expended. (98 Stat. 100, 104 Stat. 853; 42 U.S.C. § 10305.)

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984

3389

EXPLANATORY NOTE

**1990 Amendment.** Section 1(n) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 853) amended section 106 to read as it appears above. Prior to amendment section 106 read as follows: "SEC. 106 (a)(1) The Secretary shall make grants or contracts in addition to those authorized under sections 104 and 105 to educational institutions, private firms, private foundations, individuals, and agencies of local or State governments for technology development concerning any aspect of water-related technology which the Secretary may deem to be of State, regional, and national importance, including technology associated with improvement of waters of impaired quality and the operation of test facilities. Such grants or contracts shall be made on the basis of the merit and feasibility of the project based on expert evaluation as deemed appropriate by the Secretary, taking care to protect proprietary information of private firms or individuals associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest

of the Nation considering the technology needs for water resources in the Nation.

(b) Each application for a grant or contract under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, the facilities of the organization performing the technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued from the development.

(c)(1) There is authorized to be appropriated to the Secretary the sum of \$6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1989, such sums to remain available until expended.

(2) In addition to sums available under the terms of paragraph (1) of this subsection, the Secretary is also authorized to obligate funds under this section if such funds are transferred under the terms of section 104(f)(2) of this Act." (98 Stat. 100.)

The 1990 Act appears in Volume V at page 3651.

**Sec. 107. [Administrative costs limited.]**—From the sums appropriated pursuant to this Act, not more than 15 per centum shall be utilized for administrative costs. (98 Stat. 101, 42 U.S.C. § 10306.)

**Sec. 108. [Research and development.]**—The type of research and development to be undertaken under the authority of sections 105 and 106 of this Act and to be encouraged by the institutes established under section 104 of this Act shall include the following:

- (1) Aspects of the hydrologic cycle;
- (2) Supply and demand for water;
- (3) Demineralization of saline and other impaired waters;
- (4) Conservation and best use of available supplies of water and methods of increasing such supplies;
- (5) Water reuse;
- (6) Depletion, contamination, and degradation of groundwater supplies;
- (7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;

March 22, 1984

3390 WATER RESOURCES RESEARCH ACT OF 1984

(8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water quality and quantity problems;

(9) Scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and

(10) Providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions. (98 Stat. 101, 104 Stat. 853; 42 U.S.C. § 10307.)

EXPLANATORY NOTE

**1990 Amendment.** Section 1(k) of the Act of September 28, 1990 (Public Law 101-397, 104 Stat. 852) amended section 108(6) by inserting immediately after "depletion" a comma and the word "contamination,". Section 1(l) of the 1990 Act amended section 108(8) by inserting immediately after "water" the words "quality and quantity". The 1990 Act appears in Volume V at page 3651.

**Sec. 109. [Patent policy.]**—Notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 9 (except subsection (1) and (n)) 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) with respect to patent policy and to the definition of title to and licensing of inventions made or conceived in the course of work performed, or under any contract or grant made, pursuant to this Act. Subject to such patent policy, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development shall (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. (98 Stat. 101, 42 U.S.C. § 10308.)

EXPLANATORY NOTE

**Reference in the text.** The Federal Development Act of 1974 (Public Law 93-527) Nonnuclear Energy, Research, and (88 Stat 1887) does not appear herein.

**Sec. 110. [Law repealed.]**—(a) Public Law 95-467 is repealed. (42 U.S.C. § 7801 et seq.)

(b) Rules and regulations issued prior to the date of enactment of this Act under the authority of Public Law 95-467 shall remain in full force and effect under this Act until superseded by new rules and regulations promulgated under this Act. (42 U.S.C. § 7801 note.)

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984 3391

EXPLANATORY NOTE

**Reference in the Text.** The Water Research and Development Act of 1978, the Act of October 17, 1978 (Public Law 95-467, 92 Stat. 1305; 42 U.S.C. § 7801 et seq.) repealed by section 110 appears in Volume IV at page 3107. Amendments and annotations of the 1978 Act appear in Supplement II at page S1067.

**Sec. 111. [Spending authority pursuant to the Congressional Budget Act of 1974.]**—Any new spending authority described in subsection (c)(2) (A) or (B) of section 401 of the Congressional Budget Act of 1974 (2 U.S.C. § 651) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts. (98 Stat. 102, 42 U.S.C. § 10309.)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Congressional Budget Act of 1974 appear in Supplemental I at page S431.

TITLE II

**Sec. 201. [Wrightsville Beach, North Carolina—Public Lands.]**—(a)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary shall convey, not later than January 24, 1984, and without consideration, all right, title, and interest of the United States in the real property description in subsection (b) of this section to the town of Wrightsville Beach, North Carolina.

(2) The conveyance of real property described in subsection (b)(1) of this section, which constitutes the Wrightsville Beach Test Facility, to such town shall be made by the Secretary on the condition that, during the period beginning on the date of such conveyance and ending on January 24, 1988, such facility is—

(A) maintained in a working order which is comparable to the condition of such facility on the date of such conveyance, and

(B) operated and maintained primarily for desalinization of other related research.

(b) The real property referred to in subsection (a) is real property located in the town of Wrightsville Beach, North Carolina, as follows:

(1) Real property which constitutes the Wrightsville Beach Test Facility and may be described as beginning at a point in the old northern line of United States Highway 76, said point located north 51 degrees 05 minutes west 530.00 feet as measured with said line from the southeast corner of tract numbered 1 as shown by "Map Showing Property of State of North Carolina" recorded in

March 22, 1984

3392 WATER RESOURCES RESEARCH ACT OF 1984

map book 7, page 40, New Hanover County Registry; running thence from said beginning north 38 degrees 55 minutes east 660.00 feet to a point; thence north 51 degrees 05 minutes west 129.80 feet to a point; thence north 38 degrees 56 minutes 30 seconds east 157.89 feet to a point; thence north 77 degrees 32 minutes 30 seconds east 101.40 feet to a point; thence north 12 degrees 07 minutes west 151.19 feet to a point in the southern line of United States Highway 74; thence with said southern line south 77 degrees 53 minutes west 563.57 feet to a point; thence south 38 degrees 55 minutes west 554.52 feet to a point in the old northern line of United States Highway 76; thence with said old northern line south 51 degrees 05 minutes east 538.47 feet to the point of beginning, containing 9.57 acres.

(2)(A) Real property which is adjacent to such Facility and may be described as beginning at a point in the old northern right of way line of United States Highway 76 (Wrightsville Causeway) at the southeastern corner of tract numbered 1 as shown by "Map Showing Property of State of North Carolina" recorded in map book 7, page 40, New Hanover County Registry; said southeast corner north 51 degrees 05 minutes west 862.6 feet as measured with said northern line from its intersection with the extension of the western line of Island Drive, Shore Acres; running thence from said beginning south 38 degrees 55 minutes west 150.00 feet to a point in the new northern right of way line of United States Highway 76; thence with said line north 51 degrees 05 minutes west 530.00 feet to a point; thence north 38 degrees 55 minutes east 150.00 feet to a point in said old northern right of way line; thence continuing north 38 degrees 55 minutes east 660.00 feet to a point; thence continuing north 38 degrees 55 minutes east 140.11 feet to a point; thence north 12 degrees 27 minutes 30 seconds west 108.44 feet to a point; thence north 77 degrees 32 minutes 30 seconds east 34.31 feet to a point; thence north 12 degrees 07 minutes west 151.19 feet to a point in the southern line of United States Highway 74; thence north 77 degrees 53 minutes east 240.00 feet to the northernmost corner of said tract numbered 1, map book 7, page 40; thence with the eastern lines of said tract numbered 1 south 12 degrees 07 minutes east 723.8 feet to its easternmost corner; thence continuing with said eastern line south 38 degrees 55 minutes west 723.8 feet to the point of beginning, containing 14.079 acres.

(B) Beginning at a point in the old northern right of way of United States Highway 76 (Causeway Drive) and the southern line of tract numbered 1 as shown by map, "Property of State of North Carolina" recorded in map book 7, page 40, New Hanover County Registry, said point located north 51 degrees 05 minutes west 1068.47 feet as with said line from the southeastern corner of said tract numbered 1; running thence from said beginning with said line north 51 degrees 05 minutes west 322.62 feet to a point in the new right of way of United States Highway 76; thence with said new right of way north 19 degrees 27 minutes 15 seconds west 32.01 feet to an iron rod; thence continuing with said new right of way north 33 degrees 42 minutes

March 22, 1984

15 seconds east 94.98 feet to an iron rod in the southern right of way of United States Highway 74; thence with said southern line north 77 degrees 53 minutes east 570.17 feet to an iron pipe; thence south 38 degrees 55 minutes west 554.55 feet to the point of beginning, containing 2.72 acres and being the western portion of said tract numbered 1 recorded in map book 7, page 40.

**Sec. 202. [Roswell, New Mexico, lands.]**—(a)(1) Notwithstanding any other provision of law and subject to paragraph (2), the Secretary shall convey, not later than December 31, 1983, and without consideration, all right, title, and interest of the United States in the real property described in subsection (b) of this section, which constitutes the Roswell Test Facility, to the city of Roswell, New Mexico.

(2) Such conveyance shall be made on the condition that, during the period beginning on the date of such conveyance and ending on December 31, 1987, such facility is—

(A) maintained in a working order which is comparable to the condition of such facility on the date of such conveyance, and

(B) operated and maintained primarily for desalinization or other related research.

(b) The real property referred to in subsection (a) of this section shall consist of so much of the real property located in the county of Chaves, New Mexico, as constitutes the Roswell Test Facility. Such real property shall consist of—(1) the lands at the Roswell site as conveyed to the United States by the city of Roswell, New Mexico, by warranty deed dated April 13, 1961, said deed being recorded in the office of the county clerk of the county of Chaves, New Mexico, at book 205, page 406, and more fully describing such lands as being—

A tract of land lying and being situated in the southwest of section 32, township 10 south, range 25 east, New Mexico principal meridian, and being more particularly described as; beginning at a point on the west line of said section 32 which bears north 3 degrees 58 minutes east at 137 feet distant from the southwest corner of said section 32; thence north 3 degrees 58 minutes east, a distance of 455 feet; thence north 78 degrees 03 minutes east, a distance of 531.9 feet; thence south 25 degrees 00 minutes east, a distance of 450.1 feet; thence southwesterly along a curve to the right, the arc which bears south 77 degrees 43 minutes west, a distance of 760.4 feet to the point of beginning, containing 6.94304 acres, and

(2) the lands at the Roswell site as conveyed to the United States by the city of Roswell, New Mexico, by warranty deed dated June 18, 1968, said deed being recorded in the office of the county clerk of the county of Chaves, New Mexico, at book 250, page 390, and more fully describing such lands as being—

A tract of land lying and being situated in the west half of the west half of the southwest quarter of section 32, township 10 south, range 25 east,

March 22, 1984

3394 WATER RESOURCES RESEARCH ACT OF 1984

New Mexico principal meridian, and being more particularly described as follows: Beginning at a point on the west line of said section 32 which bears north 3 degrees 57 minutes east 592 feet distant from the southeast corner of said section 32; thence north 3 degrees 58 minutes east, a distance of 911.5 feet; thence south 39 degrees 33 minutes east, a distance of 179.00 feet; thence south 27 degrees 35 minutes east, a distance of 1,193.00 feet; thence southwesterly along the north highway right-of-way line on a curve to the right of 5,655 feet radius through an included angle of 0 degrees 13 minutes, a distance of 21.31 feet; thence north 25 degrees 00 minutes west, a distance of 444.26 feet; thence south 78 degrees 03 minutes west, a distance of 531.9 feet to the point of beginning containing 5,795 acres, more or less. Note: The east boundary of this tract of land lies 50 feet west of the center line of the Hagerman canal, together with water rights appurtenant thereto.

**Sec. 203. [Conveyance clause.]**—Each conveyance issued by the Secretary pursuant to the provisions of this title shall contain a clause providing that the title to the lands and facilities conveyed shall revert to the United States should such lands or facilities be used for other than a public purpose following the date of conveyance.

THOMAS P. O'NEILL, JR.  
*Speaker of the House of Representatives.*

STROM THURMOND  
*President of the Senate pro Tempore*

IN THE SENATE OF THE UNITED STATES,  
*March 21 (legislative day, March 19), 1984.*

The Senate having proceeded to reconsider the bill (S. 684) entitled "An Act to authorize an ongoing program of water resources research, and for other purposes", returned by the President of the United States with his objections, to the Senate, in which it originated, it was

*Resolved*, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

WILLIAM F. HILDENBRAND  
*Secretary.*

I certify that this Act originated in the Senate.

WILLIAM F. HILDENBRAND  
*Secretary.*

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984 3395

IN THE HOUSE OF REPRESENTATIVES, U.S.,  
*March 22, 1984.*

The House of Representatives having proceeded to reconsider the bill (S. 684) entitled "An Act to authorize an ongoing program of water resources research, and for other purposes", returned by the President of the United States with his objections, to the Senate, in which it originated, and passed by the Senate on reconsideration of the same, it was

*Resolved*, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

BENJAMIN J. GUTHRIE  
*Clerk.* (98 Stat. 105)

EXPLANATORY NOTE

**Legislative History.** S684 (H.R. 2911) October 31, 1983. Senate concurred in House Public Law in the 98<sup>th</sup> Congress. Reported in amendments with an amendment, November the Senate from Environment and Public Works; S. Rept. No. 98-91. Passed the Senate 18, 1983. House concurred in Senate amendment February 7, 1984. President vetoed May 25, 1983. Reported in the House from February 21, 1984. Senate overrode veto Interior and Insular Affairs; H.R. No. 98-416 March 21, 1984. House overrode veto March accompanying H.R. 2911. H.R. 2911 passed 22, 1984. House; S684 amended passed in lieu,

TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

**Sec. 301. [High Plains Study Council.]**—(a) There is hereby established the High Plains Study Council composed of—

(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the "High Plains region"), or a designee of the Governor;

(2) a representative of the Department of Agriculture; and

(3) a representative of the Secretary.

(b) The Council established pursuant to this section shall—

(1) review research work being performed by each State committee established under section 302 of this Act; and

(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

**Sec. 302. [Technical advisory committee—State committee.]**—(a) The Secretary shall establish within each State of the High Plains region an Ogallala

March 22, 1984

3396 WATER RESOURCES RESEARCH ACT OF 1984

aquifer technical advisory committee (hereinafter in this title referred to as the "State committee"). Each State committee shall be composed of no more than seven members, including—

- (1) a representative of the United States Department of Agriculture;
- (2) a representative of the Secretary; and
- (3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act), and others with a special interest or expertise in water resources.

(b) The State committee established pursuant to subsection (a) of this section shall—

- (1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;
- (2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and
- (3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section. (100 Stat. 4239; 42 U.S.C. § 10301 note.)

**Sec. 303. [Allocation of Federal funds among the States.]**—The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

- (1) water-use efficiency;
- (2) cultural methods;
- (3) irrigation technologies;
- (4) water-efficient crops; and
- (5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

**Sec. 304. [Allocation of funds for research purposes.]**—The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

- (1) precipitation management;
- (2) weather modification;

March 22, 1984

WATER RESOURCES RESEARCH ACT OF 1984

3397

- (3) aquifer recharge opportunities;
- (4) saline water uses;
- (5) desalinization technologies;
- (6) salt tolerant crops; and
- (7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit. (100 Stat. 4240)

**Sec. 305. [Grants for demonstration projects.]**—The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

- (1) water-efficient irrigation technologies and practices;
- (2) soil and water conservation management systems; and
- (3) the growing and marketing of more water-efficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees. (42 U.S.C. § 10301 note.)

**Sec. 306. [Biennial report to the Congress.]**—The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report biennially to Congress. (109 Stat. 722)

EXPLANATORY NOTE

**1995 Amendment.** Section 1082 of the Federal Reports Elimination and Sunset Act of 1995 (Act of December 21, 1995, Public Law 104-66, 109 Stat. 707) amended sections 306 above and 308 below as follows: (1) in section 306, by striking "annually" and inserting "biennially"; and (2) in section 308, by striking "intervals of one year" and inserting "intervals of 2 years". Section 1082 of the 1995 Act appears in Volume V at page 4072.

**Sec. 307. [Federal cost share.]**—The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

**Sec. 308. [Reports to the Congress required.]**—Not later than one year after the date of enactment of this title, and at intervals of 2 years thereafter, the

March 22, 1984

3398 WATER RESOURCES RESEARCH ACT OF 1984

Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title. (109 Stat. 722)

**Sec. 309. [Appropriations.]—(a)** For each of the fiscal years ending September 30, 1987, through September 30, 1995, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

- (1) \$600,000 for the purposes of section 302;
- (2) \$4,300,000 for the purposes of section 303;
- (3) \$2,200,000 for the purposes of section 304;
- (4) \$5,300,000 for the purposes of section 305; and
- (5) \$600,000 for the purposes of section 306.

(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States. (100 Stat. 4241; 109 Stat. 722; 42 U.S.C. § 10301 note.)

EXPLANATORY NOTES

**1990 Amendment.** Section 1(o) of the Act of September 28, 1990 Public Law 101-397, 104 Stat. 854 amended section 309(a) on deleting "1991" and inserting in lieu thereof "1995". The 1990 Act appears in Volume V at page 3651.

**1986 Amendment.** Section 1121 of the Water Resources Development Act of 1986 Act of November 17, 1986 ( Public Law 99-662, 100- Stat. 4082) amended Public Law 98-242 by adding at the end thereof Title III as it appears above. The 1986 Act appears in Volume V at page 3532. Section 1121 of the 1986 Act appears at page 3540.

**Legislative History for Titles I and II.** S. 684 (H.R. 2911) Public Law 98-242 in the 98<sup>th</sup> Congress. Reported in the Senate from Environment and Public Works; S. Rept. No. 98-91. Passed Senate May 25, 1983. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-416 accompanying H.R. 2911. H.R. 2911 considered and passed House; S. 684, amended, passed in lieu October 31,

1983. Senate concurred in House amendments with an amendment November 18, 1983. House concurred in Senate amendment Feb. 7, 1984. Senate overrode veto Mar. 21, 1984. House overrode veto Mar. 22, 1984.

**Legislative History for Title III.** H.R. 6 (H.R. 2494) (S. 1567), Public Law 99-662 in the 99<sup>th</sup> Congress. Reported in the House from Public Works and Transportation; H.R. Repts. No. 99-111 accompanying H.R. 2494, No. 99-251, Pt. 1 (Public Works and Transportation), Pt. 2 (Interior and Insular Affairs), Pt.3 (Ways and Means), Pt. 4 (Merchant Marine and Fisheries), and No. 99-1013 (Conference). S. Repts. No. 99-126 accompanying S. 1567 (Environment and Public Works) and No. 99-228 accompanying S. 1567 (Finance). Considered and passed House November 5, 6, 13, 1985. Considered and passed Senate, amended, in lieu of S. 1567 Mar. 26, 1986. House and Senate agreed to conference report October 17, 1986.

July 16, 1984

3399

**ENERGY AND WATER DEVELOPMENT APPROPRIATION  
ACT OF 1985**

[Extracts from] an Act making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes. (Act of July 16, 1984, Public Law 98-360, 98 Stat. 403)

\* \* \* \* \*

**TITLE II—DEPARTMENT OF THE INTERIOR**

**BUREAU OF RECLAMATION**

\* \* \* \* \*

**CONSTRUCTION PROGRAM**

\* \* \* \* \*

**[Garrison Diversion Unit, North Dakota—Not to affect waters flowing into Canada.]**—The design, construction and operation of the Garrison Diversion Unit are to be accomplished so as to meet the United States obligation under the Boundary Waters Treaty of 1909 and that no appropriation, fund, or authority under this heading shall be used for construction of features of the Garrison Diversion Unit in North Dakota affecting waters flowing into Canada.

EXPLANATORY NOTE

**Reference in the Text.** The Boundary Waters treaty of 1909 appears in Volume I at page 129.

\* \* \* \* \*

**Sec. 206. [Foss Dam—Nonreimbursable.]**— The cost of foundation treatment, drainage, and instrumentation work planned or underway at Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under the Federal reclamation law.

**Sec. 207. [Garrison Diversion Unit, North Dakota—Establishment of Commission.]**—(a) It is the sense of Congress that—

(1) the Garrison Diversion Unit was authorized by Congress and reflects the entitlement of the State of North Dakota to a federally funded water

July 16, 1984

3400 ENERGY AND WATER APPROPRIATIONS ACT, 1985

development program as compensation for North Dakota's contributions to the Pick-Sloan Missouri Basin program;

(2) there is a need to put to beneficial use water from the Missouri River within the State of North Dakota;

(3) there are municipal and industrial water resource problems in North Dakota that are presently unmet;

(4) there are irrigation and agricultural water needs in areas which cannot be met by the Garrison Diversion Unit as presently authorized;

(5) the Garrison Diversion Unit, as presently authorized, raises significant issues of economic, environmental, and international concern;

(6) the water needs of the State of North Dakota should be resolved by contemporary water development alternatives; and

(7) a Secretarial commission should be established to examine the water needs of North Dakota and propose development alternatives which will lead to the early resolution of the problems identified.

(b) No funds appropriated under this title for the Garrison Diversion Unit, Pick-Sloan Missouri Basin program, shall be expended or committed for expenditure on construction contracts prior to December 31, 1984. Notwithstanding the preceding sentence, funds appropriated may be expended or committed for expenditure for the work associated with the commission established by this section. Funds may be expended or committed for expenditure after such date for construction of the Garrison Diversion Unit—

(1) in accordance with the recommendations of the Secretarial commission established under subsection (c); or

(2) if the commission fails to make such recommendations, as presently authorized.

(c)(1) The Secretary of the Interior shall, within thirty days after the date of enactment of this section, appoint a commission, composed of 12 individuals, to review the contemporary water development needs of the State of North Dakota and propose modifications to the Garrison Diversion Unit consistent with the existing authorization. The Secretary shall designate one member who shall serve as chairman of the commission who shall set the dates of hearings, meetings, and other official commission functions in carrying out the purposes of this section. The commission, in developing its recommendations, shall hold no fewer than three public hearings, at least two of which shall be in the State of North Dakota. Any recommendations of the commission shall be agreed to by at least 8 members. The commission shall cease to exist on December 31, 1984.

(2) The commission is directed to examine, review, evaluate, and make recommendations with regard to the contemporary water development needs of the State of North Dakota, taking into consideration—

(A) the costs and benefits incurred and opportunities foregone by the State of North Dakota between 1944 and 1984 as a result of the establishment and implementation of the Pick-Sloan Missouri Basin program;

July 16, 1984

ENERGY AND WATER APPROPRIATIONS ACT, 1985 3401

(B) the need and potential for North Dakota to put to beneficial use within the State water from the Missouri River;

(C) the need for construction of additional facilities to put to beneficial use water from the Missouri River;

(D) the municipal and industrial water needs and development potential within the State of North Dakota, including such matters as—

(i) quality of water supply,

(ii) the ability of existing systems to meet present and future demand,

(iii) related groundwater problems,

(iv) water treatment,

(v) water delivery by pipeline, and

(vi) instream flow needs;

(E) the possible use of groundwater recharge for municipal and industrial uses, as well as irrigation;

(F) the current North Dakota water plan, including proposed projects, to determine if elements of the plan (such as the southwest pipeline project) should be recommended for Federal funding;

(G) whether or not the Garrison Diversion Unit can be redesigned and reformulated;

(H) the institutional and tax equity issues in the State of North Dakota as they relate to the authorized project and alternative water development proposals;

(I) the fiscal and economic impacts of the Garrison Diversion Unit, as compared with alternative proposals for irrigation and municipal and industrial water supply;

(J) the environmental impacts of the water development alternatives mentioned in this section, compared with those of the Garrison Diversion Unit, including impacts on wildlife refuges, wetlands, wildlife habitat, waterfowl, and other environmental impacts as well as make recommendations to reduce and minimize those impacts; and

(K) the international impacts of the water development alternatives described in this section compared with those of the Garrison Diversion Unit and make recommendations to reduce and minimize those impacts.

All recommendations of the commission shall retain the originally authorized discount rate.

(3) The commission shall submit to the Secretary of the Interior, the chairmen of the Senate Committees on Energy and Natural Resources and Appropriations, and the House Committees on Interior and Insular Affairs and Appropriations, no later than December 31, 1984, a report which contains the conclusions and recommendations of the commission with regard to the items described in paragraph (2).

(d) The Secretary of the Interior is authorized and directed to implement the recommendations of the commission report consistent with existing authority.

July 16, 1984

3402 ENERGY AND WATER APPROPRIATIONS ACT, 1985

(e) Nothing in this section shall affect any litigation initiated prior to June 1, 1984. (98 Stat. 411)

\* \* \* \* \*

**[Secretary of Energy authorized to construct additional power transmission facilities between Pacific Northwest and California.]**—Notwithstanding the provisions of section 8 of Public Law 88-552, the Secretary of Energy is authorized to construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California and to accept funds contributed by non-Federal entities for that purpose. (98 Stat. 416)

EXPLANATORY NOTE

**Reference in the Text.** Section 8 of the Pacific Northwest Power Marketing Act, Act of August 31, 1964, Public Law 88-552 (78 Stat. 756) appears in Volume III at page 1763.

\* \* \* \* \*

EXPLANATORY NOTES

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

**Legislative History.** H.R. 5653, Public Law 98-360 in the 98<sup>th</sup> Congress. Reported in the House from Appropriations; H.R. Repts. No. 98-775 and 98-866 (Conference). Passed House May 22, 1984. Reported in the Senate from

Appropriations; S. Rept. 98-502. Passed Senate, amended June 21, 1984. House agreed to conference report; concurred in certain Senate amendments and in others with amendments. Senate agreed to conference report and concurred in House amendments.

August 17, 1984

3403

## HOOVER POWER PLANT ACT OF 1984

An Act to authorize the Secretary of the Interior to construct, operate, and maintain certain facilities at Hoover Dam, and for other purposes. (Aug. 17, 1984, Public Law 98-381, 98 Stat. 1333, 43 U.S.C. § 619; as amended by the Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776.)

**Section 1. [Short title.]**—This Act may be cited as the "Hoover Power Plant Act of 1984". (43 U.S.C. § 619 note.)

### TITLE I

**Sec. 101. (a) [Upgrading program—Visitor facilities.]**—The Secretary of the Interior is authorized to increase the capacity of existing generating equipment and appurtenances at Hoover Powerplant (hereinafter in this Act referred to as "upgrading program"); and to improve parking, visitor facilities, and roadways and to provide additional elevators, and other facilities that will contribute to the safety and sufficiency of visitor access to Hoover Dam and Powerplant (hereinafter in this Act referred to as "visitor facilities program").

**(b) [Bridge crossing.]**—The Secretary of the Interior is authorized to construct a Colorado River bridge crossing, including suitable approach spans, immediately downstream from Hoover Dam for the purpose of alleviating traffic congestion and reducing safety hazards. This bridge shall not be a part of the Boulder Canyon project and shall neither be funded nor repaid from the Colorado River Dam Fund or the Lower Colorado River Basin Development Fund. (98 Stat. 1333, 43 U.S.C. § 619.)

**Sec. 102. [Amendments to the Colorado River Basin Project Act of 1968.]**—(a) Section 403(b) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. § 1543) is amended by inserting "(1)" after "(b)" and adding the following new paragraph at the end thereof:

"(2) Except as provided in subsection 309(b), as amended (43 U.S.C. § 1528), sums advanced by non-Federal entities for the purpose of carrying out the provisions of title III of this Act (43 U.S.C. § 1521) shall be credited to the development fund and shall be available without further appropriation for such purpose."

(b) Paragraph (1) of section 403(c) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. § 1543(c)) is revised to read as follows:

"(1) All revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), until completion of repayment requirements of the Central Arizona project;"

August 17, 1984

3404

HOOVER POWER PLANT ACT OF 1984

(c) Paragraph (2) of section 403(c) (43 U.S.C. § 1543.) is revised by inserting immediately preceding the existing proviso: "*Provided, however,* That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act (43 U.S.C. § 1521), the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4-1/2 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2-1/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* That after the repayment period for said Central Arizona project, the equivalent of 2-1/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section:". (98 Stat. 1333)

EXPLANATORY NOTE

**Reference in the Text.** Subsections 403(b) and 403(c) of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 894, as amended, 43 U.S.C. § 1543) referenced above provides for the establishment and administration of the Lower Colorado River Basin Development Fund. The Act appears in Volume IV at page 2395. The referenced subsections appear at page 2413. Amendments and annotations of the 1968 Act appear in Supplement II at page S995.

**Sec. 103. [Amendments to the Boulder Canyon Project Act of 1928.]—**  
(a) The Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, is further amended:

(1) In the first sentence of section 2(b), by striking out "except that the aggregate amount of such advances shall not exceed the sum of \$165,000,000", and by replacing the comma after the word "Act" with a period.

(2) In section 3, by deleting "\$165,000,000." and inserting in lieu thereof "\$242,000,000, of which \$77,000,000 (October 1983 price levels) shall be adjusted plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs as indicated by engineering cost indices applicable to the type of construction involved herein.

Said \$77,000,000 represents the additional amount required for the uprating program and the visitor facilities program." (43 U.S.C. § 617 note)

(b) Except as amended by this Act, the Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. § 617 et seq.), as amended and supplemented, shall remain in full force and effect. (98 Stat. 1334)

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3405

EXPLANATORY NOTE

**Reference in the Text.** The Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, referenced above, appears in Volume I at page 414. The referenced sections 2 and 3 appear at pages 417 and 419, respectively. Amendments and annotations of the 1928 Act appear in Supplement II at page S839.

**Sec. 104. [Amendments to the Boulder Canyon Project Adjustment Act of 1940.]—**(a) The Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. § 618), as amended and supplemented, is further amended:

(1) In section 1 (43 U.S.C. § 618) by deleting the phrase "during the period beginning June 1, 1937, and ending May 31, 1987" appearing in the introductory paragraph of section 1 and in section 1(a) and inserting in lieu thereof "beginning June 1, 1937".

(2) In section 1(b) by deleting the phrase "and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987" and inserting in lieu thereof "and such advances made on and after June 1, 1937, over fifty-year periods".

(3) In section 1 by deleting the word "and" at the end of subsection (c); deleting the period at the end of subsection (d) and inserting in lieu thereof "; and", and by adding after subsection (d) the following new subsection (e):

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

(4) In section 2 (48 U.S.C. § 618a):

(i) by deleting the first sentence and subsection (a) and inserting in lieu thereof: "All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:

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

(ii) by amending subsection (e) to read as follows:

"(e) Transfer to the Lower Colorado River Basin Development Fund established by title IV of the Colorado River Basin Project Act of 1968, as amended and supplemented (43 U.S.C. § 1541), of the revenues referred to in section 1(e) of this Act." (43 U.S.C. § 618)

August 17, 1984

3406

HOOVER POWER PLANT ACT OF 1984

(5) By deleting the final period at the end of section 6 (43 U.S.C. § 618e.) and inserting in lieu thereof the following: "*Provided*, That the respective rates of interest on appropriated funds advanced for the visitor facilities program, as described in section 101(a) of the Hoover Power Plant Act of 1984, shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the program during the month preceding the fiscal year in which the costs of the program are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish for repayment purposes an interest rate at a weighted average of the rates so determined."

(6) In section 12 (43 U.S.C. § 618k), in the paragraph beginning with "Replacements", by deleting "during the period from June 1, 1937, to May 31, 1987, inclusive" and inserting in lieu thereof "beginning June 1, 1937".

(b) Except as amended by this Act, the Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. 618), as amended and supplemented (43 U.S.C. § 618 note; 43U.S.C. § 618o), shall remain in full force and effect. (98 Stat. 1334)

EXPLANATORY NOTE

**Reference in the Text.** The Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. § 618), as amended and supplemented, referenced above, appears in Volume I at page 697. The referenced sections 1, 2, 6, and 12 appear at pages 697, 698, 701, and 703, respectively. Amendments and annotations of the 1940 Act appear in Supplement II at page S857.

**Sec. 105. [Renewal contracts.]**—(a)(1) The Secretary of Energy shall offer (43 U.S.C. § 619a.):

(A) To each contractor for power generated at Hoover Dam a renewal contract for delivery commencing June 1, 1987, of the specific amount of capacity and firm energy specified for that contractor in the following table:

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3407

SCHEDULE A

LONG TERM CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY  
RESERVED FOR RENEWAL CONTRACT OFFERS TO CURRENT BOULDER CANYON  
PROJECT CONTRACTORS

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Metropolitan Water District of Southern California.....	247,500	904,382	387,592	1,291,974
City of Los Angeles.....	490,875	488,535	209,658	698,193
Southern California Edison.....	277,500	175,486	75,208	250,694
City of Glendale.....	18,000	47,398	20,313	67,711
City of Pasadena .....	11,000	40,655	17,424	58,079
City of Burbank.....	5,125	14,811	6,347	21,158
Arizona Power Authority.....	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada.....	189,000	452,192	193,797	645,989
United States, for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787

(B) To purchasers in the States of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. § 617d), contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

HOOVER POWER PLANT ACT OF 1984

SCHEDULE B

CONTINGENT CAPACITY RESULTING FROM THE UPRATING PROGRAM  
AND ASSOCIATED FIRM ENERGY

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Nevada .....	188,000	148,000	64,000	212,000
Arizona .....	127,000	99,850	43,364	143,214
California .....	188,000	288,000	124,000	412,000
Totals .....	503,000	535,850	231,364	767,214

*Provided, however,* That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: *Provided further,* That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3409

SCHEDULE C

Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: <i>Provided, however,</i> That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in the amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona  ..... Arizona, Nevada, California
Second: Meeting Hoover Dam contractual obligations under schedule A of section 105(a)(1)(A) and under schedule B of section 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	

(2) The total obligation of the Secretary of Energy to deliver firm energy pursuant to schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B) is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in any year of operation (less deliveries thereof to Arizona required by its first priority under schedule C of section 105(a)(1)(C) whenever actual generation in any year of operation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said schedules A and B in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.

(3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 Federal Register commencing at 20881), hereinafter as the "Criteria" as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.

(4) Each contract offered under subsection (a)(1) of this section shall:

(A) expire September 30, 2017;

August 17, 1984

3410

HOOVER POWER PLANT ACT OF 1984

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided*, That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall use such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; and

(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act (43 U.S.C. § 617t), as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, 2017.

(c)(1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. § 617d).

(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3411

(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.

(g) The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for the renewal of contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning June 1, 1987, and ending September 30, 2017.

(h)(1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of this Act in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Boulder Canyon Project Act (43 U.S.C. § 617t) or the Boulder Canyon Project Adjustment Act (43 U.S.C. § 618o) is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.

(2) Any contract entered into pursuant to section 105 or section 107 of this Act shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of this title or of applicable regulations or of the contract may be determined by arbitration or court proceedings. The Secretary of Energy or the Secretary of the Interior, as the case may be, if authorized to act for the United States in such arbitration or court proceedings and, except as provided in paragraph (1) of this subsection, jurisdiction is conferred upon any district court of the United States of proper venue to determine the dispute.

(i) It is the purpose of subsections (c), (g), and (h) of this section to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning June 1, 1987, and ending September 30, 2017, will vest with certainty and finality. (98 Stat. 1335)

**Sec. 106. [Repayment requirements.]**—Reimbursement of funds advanced by non-Federal purchasers for the uprating program shall be a repayment requirement of the Boulder Canyon project beginning with the first day of the

August 17, 1984

3412

HOOVER POWER PLANT ACT OF 1984

month following completion of each segment thereof. The cost of the visitor facilities program as defined in section 101(a) of this Act (43 U.S.C. § 619b) shall become a repayment requirement beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

**Sec. 107. ["Navajo surplus" power.]**—(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974 (42 U.S.C. § 7133 note), as amended (hereinafter in this Act (43 U.S.C. § 1571) referred to as "Navajo surplus") shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. § 485h) and as provided in part IV, section A of the Criteria.

(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 (43 U.S.C. § 389), shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (e) of this section: *Provided, however,* That rates shall not

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3413

exceed levels that allow for an appropriate saving for the contractor.

(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control. (98 Stat. 1339)

EXPLANATORY NOTES

**References in the Text.** Subsection 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974 (42 U.S.C. § 7133 note.), referenced above, appears in Volume IV at page 2858. Subsection 9(c) and section 14 of the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187) referenced above appear in Volume I at pages 647 and 660, respectively.

**Sec. 108. [Report to certain committees required.]**—Recognizing the expiration of Colorado River storage project (CRSP) contracts in 1989, prior to final reallocation of CRSP power pursuant to existing law, and within one year after enactment of this Act, the Secretary of Energy, acting through the Western Area Power Administration, shall report, to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on all Colorado River storage project (CRSP) power resources, including those presently allocated to the Lower Division States, which may be used to financially support the development of authorized projects in the States of the Upper Division (as that term is used in article 11 of the Colorado River Compact) of the Colorado River Basin.

EXPLANATORY NOTES

**References in the Text.** The Colorado River storage project (CRSP), referenced above, was authorized by the Act of April 11, 1956, ch. 203, 70 Stat. 105. That Act as amended and supplemented, appears in Volume I at page 1243, in Volume IV at pages 2416 and 2871, and in Supplement I at page S247. Amendments and annotations of the 1956 Act appear in Supplement II at page S873. The Colorado River Compact, referenced above, appears in Volume I at page 442.

**Sec. 109. [Fish passage facilities in Yakima River Basin.]**—The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto (43 U.S.C. § 371 note)) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697; 16 U.S.C. § 839 note; 16 U.S.C. § 839b note) is authorized to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any

August 17, 1984

3414 HOOVER POWER PLANT ACT OF 1984

entity, public or private, to design, construct, operate, and maintain such facilities. (98 Stat. 1340)

EXPLANATORY NOTE

**References in the Text.** The Pacific Northwest Electric Power Planning and Conservation Act, Act of December 5, 1980 (Public Law 95-501, 94 Stat. 2697; 16 U.S.C. § 839 note.; 16 U.S.C. § 839b note.) referenced above, appears in Volume IV at page 3225.

TITLE II—INTEGRATED RESOURCE PLANNING

Sec. 201. Definitions.

Sec. 202. Regulations to require integrated resource planning.

Sec. 203. Technical assistance.

Sec. 204. Integrated resource plans.

Sec. 205. Miscellaneous provisions.

**Sec. 201. [Definitions.]—As used in this title:**

(1) The term ‘Administrator’ means the Administrator of the Western Area Power Administration.

(2) The term ‘integrated resource planning’ means a plan process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term ‘least cost option’ means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term ‘long-term firm power service contract’ means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms ‘customer’ or ‘customers’ means any entity or entities purchasing firm capacity with or without energy, from the Western Area

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3415

Power Administration under a long-term firm power service contract. Such terms include parent type entities and their distribution or user members.

(6) For any customer, the term 'applicable integrated resource plan' means the integrated resource plan approved by the Administrator under this title for that customer. (106 Stat. 2799; 42 U.S.C. § 7275.)

**Sec. 202. [Regulations to require integrated resource planning.]—**

(a) **[Regulations.]—**Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1986 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after the enactment of this section, integrated resource planning in accordance with the requirements of this title.

(b) **[Certain small customers.]—**Notwithstanding subsection (a), for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects. (106 Stat. 2800, 42 U.S.C. § 7276.)

**Sec. 203. [Technical assistance.]—**The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning. (42 U.S.C. § 7276a.)

**Sec. 204. [Integrated resource Plans.]—**(a) **[Review by Western Area Power Administration.]—**Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892),

August 17, 1984

3416

HOOVER POWER PLANT ACT OF 1984

or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision complied with this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with this title. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of this title the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with this title. (106 Stat. 2801; 42 U.S.C. 7276b.)

**(b) [Criteria for approval of integrated resource plans.]**—The Administrator shall approve an integrated resource plan submitted as required under subsection (a) if, in developing the plan, the customer has:

- (1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.
- (2) Included a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its integrated resource plan.
- (3) Designated 'least-cost options' to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.
- (4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.
- (5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.
- (6) Included load forecasting.
- (7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.
- (8) Met such other criteria as the Administrator shall require.

**(c) [Use of other integrated resource plans.]**—Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3417

planning considered and implemented pursuant to section 111(d) of the Public Utility Regulatory Policies Act of 1978, in evaluating that customer's integrated resource plan under this title, the Administrator shall accept such plan as fulfillment of the requirements of this title to the extent such plan substantially complies with the requirements of this title.

**(d) [Compliance with integrated resource plans.]**—Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out of compliance, the Administrator shall impose a surcharge under this section on an electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

**(e) [Enforcement.]—(1) [No approved plan.]**—If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

**(2) [Failure to comply with approved plan.]**—After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with

the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.

(3) **[Reduction in power allocation.]**—In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

(f) **[Integrated resource planning cooperatives.]**—With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

(g) **[Customers with more than 1 contract.]**—If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under this title.

(h) **[Program review.]**—Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Administrator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in section 204(b) to reflect changes, if any, in technology, needs, or other developments.

**Sec. 205. [Miscellaneous provisions.]—(a) [Environmental impact statement.]**—The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Administrator implementing this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

(b) **[Annual reports.]**—The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under this title and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

(c) **[State regulated investor-owned utilities.]**—Any State regulated electric utility (as defined in section 3(18) of the Public Utility Regulatory Policies Act of 1978) shall be exempt from the provisions of this title.

August 17, 1984

HOOVER POWER PLANT ACT OF 1984

3419

**(d) [Rural electrification administration requirements.]**—Nothing in this title shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration. (106 Stat. 2803; 42 U.S.C. § 7276c.)

EXPLANATORY NOTES

**1992 Amendment.** Section 114 of the Energy Policy Act of 1992 (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776) amended Title II of this Act to read as it appears above. Section 114 of the 1992 Act appears in Volume V at page 3771.

Prior to amendment, Title II read as follows:

**Sec. 201. [Energy conservation program required.]**—Each long-term firm power service contract entered into or amended subsequent to one year from the date of enactment of this Act (42 U.S.C. § 7275.) by the Secretary of Energy acting by and through the Western Area Power Administration (hereinafter "Western"), shall contain an article requiring the development and implementation by the purchaser thereunder of an energy conservation program. A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than one year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one program will be required for that purchaser. Each such contract article shall —

(1) contain time schedules for meeting program goals and delineate actions to be taken in the event such schedules are not met, which may include a reduction of the allocation of capacity or energy to such purchaser as would otherwise be provided under such contract; and

(2) provide for review and modification of the energy conservation program at not to exceed five year intervals.

(b) For purposes of this title, an energy conservation program shall—

(1) apply to all uses of energy and capacity which are provided from any Federal project;

(2) contain definite goals;

(3) encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner. (98 Stat. 1340)

**Sec. 202. [Amendment of regulations required.]**—(a) Within one year after the date of enactment of this Act (42 U.S.C. § 7276.), Western shall amend its existing regulations (46 Fed. Reg. 56140) to reflect—

(1) the elements to be considered in the energy conservation programs required by this title, and

(2) Western's criteria for evaluating and approving such programs.

Such amended regulations shall be promulgated only after public notice and opportunity to comment in accordance with the Administrative Procedure Act (5 U.S.C. § 551-706; 5 U.S.C. note prec. § 551.).

(b) The following elements shall be considered by Western in evaluating energy conservation programs:

(1) energy consumption efficiency improvements;

(2) use of renewable energy resources in addition to hydroelectric power;

(3) load management techniques;

(4) cogeneration;

(5) rate design improvements, including—

(i) cost of service pricing;

(ii) elimination of declining block rates;

(iii) time of day rates;

(iv) seasonal rates; and

(v) interruptible rates; and

(6) production efficiency improvements.

(c) Where a purchaser is implementing one or

August 17, 1984

3420

HOOVER POWER PLANT ACT OF 1984

more of the foregoing elements under a program responding to Federal, State, or other initiatives that apply to conservation and renewable energy development, in evaluating that purchaser's energy conservation program submitted pursuant to this title, Western shall make due allowance for the incorporation of such elements within the energy conservation program required by this title. (98 Stat. 1341)

**References in the Text.** The National Environmental Policy Act of 1969 appears in Volume IV at page 2492.

Extracts from the Public Utility Regulatory Policies Act of 1978 appear in Volume IV at page 3137.

The Administrative Procedure Act, Act of

June 11, 1946 (60 Stat. 237, 5 U.S.C. § 551-706; 5 U.S.C. note prec. § 551.) appears in Volume I at page 1927, and as amended, in Supplement I at page S446.

**Legislative History.** S. 268 (H.R. 4275), Public Law in the 98<sup>th</sup> Congress. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 98-137. Passed the Senate on August 4, 1983. Reported in the House from Interior and Insular Affairs; H. R. Rept. No. 98-648 accompanying H.R. 4275. H.R. 4275 passed the House May 3, 1984; S. 268, amended, passed in lieu. Senate considered and concurred in House amendments July 26, 27, 30, 31, 1984.

August 28, 1984

3421

**THE RECLAMATION SAFETY OF DAMS ACT  
AMENDMENTS OF 1984**

An Act to amend the Reclamation Safety of Dams Act of 1978, and for other purposes. (Act of August 28, 1984, Public Law 98-404, 98 Stat. 1481)

**[Short title.]**—This Act may be cited as "The Reclamation Safety of Dams Act Amendments of 1984".

EXPLANATORY NOTE

**Reference in the Text.** The Reclamation Safety of Dams Act of November 2, 1978 (92 Stat. 2471, 43 U.S.C. 506, et seq.) appears in Volume IV at page 3127. Amendments and annotations of the 1978 Act appear in Supplement II at page S1069.

**[Amendments to the Safety of Dams Act.]**—The Reclamation Safety of Dams Act of 1978 (92 Stat. 2471, 43 U.S.C. 506, et seq.) is amended as follows:

(1) In subsection 4(b), strike "Costs" and insert the following in lieu thereof: "With respect to the \$100,000,000 authorized to be appropriated in the Reclamation Safety of Dams Act of 1978, costs". (43 U.S.C. § 506 note; 43 U.S.C. § 508.)

(2) After section 4(b), add the following new subsections:

"(c) With respect to the additional \$650,000,000 authorized to be appropriated in The Reclamation Safety of Dams Act Amendments of 1984, costs incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes, shall be reimbursed to the extent provided in this subsection.

"(1) Fifteen percent of such costs shall be allocated to the authorized purposes of the structure, except that in the case of Jackson Lake Dam, Minidoka Project, Idaho-Wyoming, such costs shall be allocated in accordance with the allocation of operation and maintenance charges.

"(2) Costs allocated to irrigation water service and capable of being repaid by the irrigation water users shall be reimbursed within 50 years of the year in which the work undertaken pursuant to this Act is substantially complete. Costs allocated to irrigation water service which are beyond the water users' ability to pay shall be reimbursed in accordance with existing law. (43 U.S.C. § 506 note.)

"(3) Costs allocated to recreation or fish and wildlife enhancement shall be reimbursed in accordance with the Federal Water Project Recreation Act (79 Stat. 213, 16 U.S.C. § 4601-12 note.), as amended.

August 28, 1984

3422 THE RECLAMATION SAFETY OF DAMS ACT

EXPLANATORY NOTE

**Reference in the Text.** The Federal Water Project Recreation Act, Act of July 9, 1965 (Public Law 89-72, 79 Stat. 213) referenced above appears in its original form in Volume III at page 1820. Amendments and annotations appear in Volume IV at page 2838, Supplement I at pages S389-S395, and Supplement II at page S921.

"(4) Costs allocated to the purpose of municipal, industrial, and miscellaneous water service, commercial power, and the portion of recreation and fish and wildlife enhancement costs reimbursable under the Federal Water Project Recreation Act, shall be repaid within 50 years with interest. The interest rate used shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period during the month preceding the fiscal year in which the costs are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish an interest rate at the weighted average of the rates so determined. (98 Stat. 1481)

"(d) The Secretary is authorized to negotiate appropriate contracts with project beneficiaries providing for the return of reimbursable costs (43 U.S.C. § 506 note.) under this Act: *Provided, however,* That no contract entered into pursuant this Act shall be deemed to be a new or amended contract for the purposes of section 203(a) of Public Law 97-293 (43 U.S.C. § 390 cc.)."

EXPLANATORY NOTE

**Reference in the Text.** Section 203(a) of Public Law 97-293, of the "Reclamation Reform Act of 1982" (96 Stat. 1264) referenced above appears in Volume IV at page 3336. The Act also appears, as subsequently amended, in Supplement II at page S1092.

(3) In the first sentence of section 5 strike the comma and all that follows through "*Provided, That no funds*" and insert in lieu thereof: "and, effective October 1, 1983, not to exceed an additional \$650,000,000 (October 1, 1983, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: *Provided, That no funds exceeding \$750,000*". (43 U.S.C. § 509.)

(4) After section 11, insert the following new sections 12 and 13:

"Sec. 12. Included within the scope of this Act are Fish Lake, Four Mile, Ochoco, Savage Rapids Diversion and Warm Springs Dams, Oregon; Como Dam, Montana; Little Wood River Dam, Idaho; and related facilities which have

August 28, 1984

THE RECLAMATION SAFETY OF DAMS ACT

3423

been made a part of a Federal reclamation project by previous Acts of Congress. Coolidge Dam, San Carlos Irrigation Project, Arizona, shall also be included within the scope of this Act. (43 U.S.C. § 506 note.)

"Sec. 13. The cost of foundation treatment, drainage and instrumentation work planned or underway at Twin Buttes, Texas, and Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under Federal reclamation law." (98 Stat. 1482)

EXPLANATORY NOTE

**Legislative History.** H.R. 1652 (S. 672) (S. Res. 234), Public Law 98-404 in the 98<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-168. Passed the House March 20, 1984. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 98-258 accompanying S. 672. Passed Senate amended August 9, 1984. House concurred, after Senate amendments August 10, 1984.

**HIGH PLAINS STATES GROUND-WATER DEMONSTRATION  
PROGRAM ACT OF 1983**

An Act to authorize and direct the Secretary of the Interior to engage in a special study of the potential for ground-water recharge in the High Plains States, and for other purposes. (Act of Sept., 28, 1984, Public Law 98-434, 98 Stat.1675; Act of October 30, 1992, Public Law 102-575, 106 Stat. 4689; Act of December 21, 1995, Public Law 104-66, 109 Stat. 721)

**Section 1. [Short title.]**—This Act may be cited as the "High Plains States Ground-water Demonstration Program Act of 1983". (43 U.S.C. § 390g note. 43 U.S.C. § 390g.)

**Sec. 2. [Investigation of and demonstration of ground-water recharge projects in High Plains States—Ground-water recharge studies or demonstrations of water originating in the Great Lakes drainage basin is prohibited.]**—The Secretary of the Interior (hereinafter referred to as the "Secretary"), acting through the Bureau of Reclamation (herein after referred to as the "Bureau"), shall, in two phases, conduct an investigation of and establish demonstration projects for ground-water recharge of aquifers in the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming (such States to be hereinafter referred to as the "High Plains States") and in the other States referred to in section 1 of the Reclamation Act of 1902 (hereinafter referred to as "other Reclamation Act States") (43 U.S.C. § 391), as provided by this Act: *Provided*, That funds made available pursuant to this Act shall not be used for the study or construction of ground-water recharge demonstration projects in the High Plains States and other Reclamation Act States which would utilize water originating in the drainage basin of the Great Lakes. The Bureau shall consult with the United States Geological Survey and other appropriate agencies and departments of the United States and of the High Plains States and other Reclamation Act States in order to carry out this Act.

**Sec. 3. [Phase I plan development—State or local entity contributions—Required number of demonstration sites—Recommendations for Phase II—Preliminary selection of projects—Report to Congress.]**—(a) During phase I, the Bureau, in consultation with the High Plains States and other Reclamation Act States and other appropriate departments and agencies of the United States, including the United States Geological Survey, shall develop a detailed plan of demonstration projects the purpose of which is to determine whether various recharge technologies may be applied to diverse geologic and hydrologic conditions represented in the High Plains States and other Reclamation Act States. In the preparation and development of such plan, the Bureau shall make maximum use of data, planning studies and other technical resources and assistance available from State and local entities: *Provided*, That contributions of such technical resources

September 28, 1984

HIGH PLAINS STATES GROUND-WATER PROGRAM 3425

and assistance may be counted as part of the inkind services or other State contribution, but shall otherwise be provided without compensation to the State or local entity. This plan shall contain the selection of not less than a total of twelve demonstration project sites in High Plains States and not less than a total of nine demonstration project sites in other Reclamation Act States. Demonstration project sites shall be confined to areas having a declining water table, an available surface water supply, and a high probability of physical, chemical, and economic feasibility for recharge of the ground-water reservoir. The plan shall provide for demonstration of the application of recharge technology and the selection of water sources, determination of necessary physical works and the operation of water replacement systems, formulation of a monitoring program, identification of any economic, legal, intergovernmental, and environmental issues and projection of planning problems associated with such systems, and recommendation of legislative and administrative actions as may be necessary to carry out phase II. (43 U.S.C. § 390g-1.)

(b) During phase I the Bureau is authorized and directed to recommend demonstration projects to be designed, constructed, and operated during phase II.

(c) Within six months, after the enactment of an appropriation Act to carry out phase I, the Secretary shall make a preliminary selection of projects to receive further planning and development and shall initiate such further planning and development for those selected projects. (98 Stat. 1675, 109 Stat. 721)

(d) *Repealed.*

EXPLANATORY NOTE

**1995 Amendment.** Section 1081(c) of the Act of December 21, 1995 (Public Law 104-66, 109 Stat. 707) repealed subsection 3(d) of the High Plains States Ground-water Demonstration Program Act of 1983 (98 Stat. 1675; 43 U.S.C. 390g-1(d)). The repealed subsection read as follows: "(d) Within twenty-four months after the date of enactment of an appropriation Act to carry out phase I, the Secretary shall transmit a report to Congress containing the recommendations made pursuant to subsection (b) and a detailed statement of his findings and conclusions." Section 1081(c) of the 1995 Act appears in Volume V at page 4071.

**Sec. 4. (a) [Phase II authorized.]**—During phase II, and subject to State water laws and interstate water compacts, the Bureau is authorized and directed to design, construct, and operate demonstration projects in the High Plains States and other Reclamation Act States to recharge ground water systems as recommended in the report referred to in section 4(c). (43 U.S.C. § 390g-2.)

**(b) [Contracts with U.S. for study of cost allocation methods.]**— During phase II the Secretary, acting through the Bureau, shall contract with the various High Plains States and other Reclamation Act States to conduct a study to identify and evaluate alternative means by which the costs of ground-water recharge projects could be allocated among the beneficiaries of the projects

September 28, 1984

3426 HIGH PLAINS STATES GROUND-WATER PROGRAM

within the respective States and identify and evaluate the economic feasibility of and the legal authority for utilizing ground-water recharge in water resource development projects.

**(c)(1) [Annual interim reports to Congress.]**—Within twelve months after the initiation of phase II, and at annual intervals thereafter, the Secretary shall submit interim reports to Congress. Each report shall contain a detailed statement of his findings and progress respecting the design, construction, and operation of the demonstration projects referred to in subsection (a) and the study referred to in subsection (b).

**(2) [Final report to Congress.]**—Within five years after the initiation of phase II, the Secretary shall submit a summary report to Congress. The summary report shall contain—

(A) a detailed evaluation of the demonstration projects referred to in subsection (a);

(B) the results of the studies referred to in subsection (b);

(C) specific recommendations regarding the location, scope, and feasibility of operational ground-water recharge projects to be constructed and maintained by the Bureau; and

(D) an evaluation of the feasibility of integrating these ground-water recharge projects into existing reclamation projects.

(3) In addition to recommendations made under section 3, the Secretary shall make additional recommendations for design, construction, and operation of demonstration projects. Such projects are authorized to be designed, constructed, and operated in accordance with subsection (a).

(4) Each project under this section shall terminate five years after the date on which construction on the project is completed.

(5) At the conclusion of phase II the Secretary shall submit a final report to the Congress which shall include, but not be limited to, a detailed evaluation of the projects under this section. (98 Stat. 1676, 106 Stat. 4689)

**Sec. 5. [Memorandum of Understanding with the Administrator of the Environmental Protection Agency.]**—The Secretary, acting through the Bureau, and the Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") shall enter into a memorandum of understanding to provide for an evaluation of the impacts to surface water and ground-water quality resulting from the ground water recharge demonstration projects constructed pursuant to this Act. The Administrator shall consult with the United States Geological Survey and shall make maximum use of data, studies, and other technical resources and assistance available from State and local entities in conducting the evaluation. The evaluation of water quality impacts shall be completed so as to be included in the Secretary's summary report to the Congress referred to in section 4(c)(2) of this Act. (98 Stat. 1676, 43 U.S.C. § 390g-3.)

September 28, 1984

HIGH PLAINS STATES GROUND-WATER PROGRAM 3427

**Sec. 6. [Phase I appropriation authorization.]**—There is authorized to be appropriated \$500,000 for fiscal years beginning after September 30, 1983, to carry out phase I. Amounts shall be made available pursuant to the authorization contained in this section in a single sum for all demonstration project sites, and it shall be within the discretion of the Secretary to apportion such sum among such sites. (43 U.S.C. § 390g-4.)

**Sec. 7. [Phase II appropriation authorization.]**—There is authorized to be appropriated for fiscal years beginning after September 30, 1983, \$31,000,000 (October 1990 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 type of construction involved herein to carry out phase II. Amounts shall be made available pursuant to the authorization contained in this section in sums for individual projects based on findings of feasibility by the Secretary. (98 Stat. 1677, 106 Stat. 4689, 43 U.S.C. § 390g-5.)

EXPLANATORY NOTE

**1995 Amendment.** Section 2601 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4689) amended this Act as follows:

(1) Section 4(c)(2) and section 5 are each amended by striking "final report" each place it appears and inserting "summary report".

(2) Section 4(c) is amended by adding at the end subsections (3), (4), and (5) as they appear above.

(3) Section 7 is amended by striking

"\$20,000,000 (October 1983 price levels)" and inserting in lieu thereof "\$31,000,000 (October 1990 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 type of construction involved herein". Section 2601 of the 1992 Act appears in Volume V at page 3913.

**Sec. 8. [Federal share of phase II costs.]**—The funds authorized to be appropriated pursuant to section 7 of this Act shall match on a four-to-one basis funds made available by the States, their political subdivisions, or other non-Federal entities to meet the cost of phase II: *Provided*, That, in-kind services or other contributions by the States, their political subdivisions, or other non-Federal entities shall be considered in the determination of the matching non-Federal share. The Secretary is authorized to enter into memoranda of agreement with any appropriate agencies or departments of the High Plains States and other Reclamation Act States to share the costs of phase II. (43 U.S.C. § 890g-6.)

**Sec. 9. [Section 401 spending authority.]**—Any new spending authority described in subsection (c)(2)(A) or (B) of section 401 of the Congressional Budget Act of 1974 which is provided under this Act (or under any amendment made by this Act) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. (43 U.S.C. § 390g-7, 2 U.S.C. § 651.)

September 28, 1984

3428 HIGH PLAINS STATES GROUND-WATER PROGRAM

**Sec. 10. [Interstate water transfer from the State of Arkansas prohibited.]**—No funds authorized to be appropriated by this Act shall be used for any activities associated with:

- (1) the interstate transfer of water from the State of Arkansas; or
- (2) the study or demonstration of the potential for the interstate transfer of water from the State of Arkansas. (98 Stat. 1677, 43 U.S.C. § 390g-8.)

EXPLANATORY NOTES

**References in the Text.** Subsection (c)(2)(A) or (B) of section 401 of the Congressional Budget Act of 1974 (2 U.S.C. § 651.) referenced in section 10 above, appears in Supplement I at page S439.

**Legislative History.** H.R. 71, Public Law 98-434 in the 98<sup>th</sup> Congress. Reported in the

House from Interior and Insular Affairs; H.R. Rept. No. 98-167. Passed the House on June 20, 1983. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 98-372. Passed Senate, amended on August 10, 1984. House concurred in Senate amendments September 14, 1984. Approved September, 28, 1984.

October 11, 1984

3429

## **H&RW IRRIGATION DISTRICT AMENDATORY CONTRACT ACT**

An Act to authorize amendments to a certain repayment and water service contract for the Frenchman Unit of the Pick-Sloan Missouri River Basin Program. (Act of Oct. 11, 1984, Public Law 98-470, 98 Stat. 1833)

**[Section 1. Authorization to execute an amendatory contract with H&RW Irrigation District, Nebraska.]**—Notwithstanding any other provision of law, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to execute an amendatory contract with H&RW Irrigation District (hereinafter in this Act referred to as the "district"), Nebraska, to amend the provisions of the district's existing contract (numbered 7-07-70-W0045) with the United States for water service and construction of a distribution system in the following manner:

(1) Rescind the construction charge obligations remaining unpaid as of September 30, 1980, and any interest or penalty thereon, under part B of such existing contract.

(2) Amend part A of such existing contract to provide that, beginning January 1, 1982, the district's annual obligation for payment of costs to the United States for water service (including the cost to the United States to operate and maintain the reserved water supply works on the Frenchman unit of the Pick-Sloan Missouri River Basin Program) and for the construction of a distribution system shall be limited to the annual water service charges for the amount of water delivered to the district. Such charges shall be based on the repayment ability of the district associated with the amount of water delivered by the district for irrigation purposes as may be determined by the Secretary taking into account an appropriate share of the district's costs for the care, operation, and maintenance of those works of the Frenchman unit transferred to the district for such purposes.

(3) Those costs allocated to the irrigation purpose of the Frenchman unit and properly assignable to the district for payment which are in excess of the district's repayment ability as determined by the Secretary, pursuant to paragraph (2), and all obligations (including any interest or penalty thereon) described in paragraph (1) shall be repaid from municipal and industrial and/or power revenues in accordance with procedures established for the Pick-Sloan Missouri River Program, authorized by the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 887-901, as amended). (98 Stat. 1833; 33 U.S.C. § 701 et seq.)

October 11, 1984

3430 H&RW ID AMENDATORY CONTRACT ACT

EXPLANATORY NOTES

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

**Reference in the Text.** Extracts from "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", Act of December 22, 1944 (ch. 665, 58 Stat. 887-901, as amended, 33 U.S.C. § 701 et seq.) commonly known as the "Flood Control Act of 1944"

appears in Volume II at page 796.

**Legislative History.** H.R. 3130, Public Law 98-470 in the 98<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-840. Passed the House June 18, 1984. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 98-624. Passed the Senate on September 28, 1984.

October 19, 1984

3431

## **AK-CHIN WATER RIGHTS SETTLEMENT ACT, REVISED**

An Act relating to the water rights of the Ak-Chin Indian Community. (Act of October 19, 1984, Public Law 98-530, 98 Stat. 2698; as amended by the Act of October 24, 1992, Public Law 102-497, 106 Stat. 3258)

**Section 1. [Congressional findings and declarations.]**—The Congress hereby finds and declares that—

(1) the Department of the Interior and the Ak-Chin Indian Community executed on September 23, 1983, an agreement entitled "Agreement in Principle for Revised Ak-Chin Water Settlement", wherein the parties agreed to revisions of the Act of July 28, 1978 (Public Law 95-328; 92 Stat. 409-411);

### EXPLANATORY NOTE

**Reference in the Text.** The Act of July 28, 1978 (Public Law 95-328; 92 Stat. 409-411) referenced above and in following sections appears in Volume IV at page 3084.

(2) the main purpose of the Agreement in Principle is to accomplish a prompt and economical fulfillment of the intent of that Act;

(3) section 3 of that Act requires that the Secretary of the Interior (hereinafter referred to as the "Secretary") as soon as possible but not later than twenty-five years after the date of the enactment of that Act, deliver to the Ak-Chin Indian Reservation a permanent supply of water to fulfill the Ak-Chin Indian Community's entitlement to eighty-five thousand acre-feet of water;

(4) section 2 of that Act requires that the Secretary deliver an interim supply of water until the permanent supply is acquired and delivered to the Reservation;

(5) the Secretary proposed to the Community, subject to the approval of Congress, to deliver the permanent supply not later than January 1, 1988, except that the Community, as a consideration, agree to certain modifications in the quantities of water to be delivered as the permanent supply and to release him from his obligation to deliver an interim supply;

(6) in order to establish January 1, 1988, as the date certain for the delivery of a permanent supply, the Community agreed to—

(A) the reduced deliveries of the permanent supply under certain conditions;

(B) the Secretary's proposals regarding the interim supply; and

(C) certain other proposals of the Secretary; and executed the Agreement in Principle; and

(7) the provisions contained in this Act conform to the purposes of that Agreement and the consideration embodied in it. (98 Stat. 2698)

October 19, 1984

3432 AK-CHIN WATER RIGHTS SETTLEMENT ACT

**Sec. 2. (a) [Delivery of Central Arizona Project water.]**—As soon as possible but not later than January 1, 1988, the Secretary shall deliver annually a permanent water supply from the main project works of the Central Arizona Project to the southeast corner of the Ak-Chin Indian Reservation of not less than seventy-five thousand acre-feet of surface water suitable for agricultural use except as otherwise provided under subsections (b) and (c).

**(b) [Delivery of additional quantities of water.]**—In any year in which sufficient surface water is available, the Secretary shall deliver such additional quantity of water as is requested by the Community not to exceed ten thousand acre-feet. The Secretary shall be required to carry out the obligation referred to in this subsection only if he determines that there is sufficient capacity available in the main project works of the Central Arizona Project to deliver such additional quantity.

**(c) [Delivery during times of shortage.]**—In time of shortage, if the aggregate supply of water referred to in subsection (f) is not sufficient to deliver seventy-five thousand acre-feet, the Secretary may deliver a lesser quantity but in no event less than seventy-two thousand acre-feet. For the purposes of this Act, the term "time of shortage" means a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537, 82 Stat. 887, 43 U.S.C. § 1501), such that there is not sufficient Central Arizona Project water in that year to supply up to a limit of three hundred nine thousand eight hundred and twenty-eight acre-feet of water for Indian uses, and up to a limit of five hundred ten thousand acre-feet of water for non-Indian municipal and industrial uses.

EXPLANATORY NOTE

**Reference in the Text.** Section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537, 82 Stat. 887, 43 U.S.C. § 1501) referenced above and in subsection 2(f)(1) appears in Volume IV at page 2401. Amendments and annotations of the 1968 Act appear in Supplement II at page S995.

**(d) [Delivery flow rates limited.]**—The Secretary shall be deemed to have satisfied his obligation to deliver water under this section only if such water is delivered at flow rates which meet the seasonal requirements for agricultural use on the Reservation. Such rates shall not exceed three hundred cubic feet per second. (98 Stat. 2699)

**(e) [Water delivery facilities.]**—To meet the obligations of the Secretary to deliver water under this Act, the Secretary shall design, construct, operate, maintain, and replace, at no cost to the Community, such facilities, including any aqueduct and appurtenant pumping facilities, powerplants; and electric power transmission facilities, which may be necessary.

October 19, 1984

AK-CHIN WATER RIGHTS SETTLEMENT ACT

3433

**(f) [Permanent water supply—Central Arizona Project water allocation.]**—The water supply referred to in subsections (a) and (c) shall consist of the aggregate of the following—

(1) First, a permanent supply of no more or less than fifty thousand acre-feet of surface water per annum to be diverted from the Colorado River of the three hundred thousand acre-feet of water heretofore authorized by the Act of July 30, 1947 (61 Stat. 628), for beneficial consumptive use on lands of the Yuma Mesa Division of the Gila Project. Water referred to in this paragraph and in subsection (g)(1) shall have equal priority. Furthermore, these provisions 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 as fully set out in section 301(b) of Public Law 90-537(43 U.S.C. § 1501.).

(2) Such Central Arizona Project water allocated to the Community and referred to in the "Notice of Final Water Allocations to Indians and non-Indian Water Users and Related Decisions" (48 Fed. Reg. 12446, March 24, 1983) as is necessary to fulfill the Secretary's water delivery obligations. Delivery of such Central Arizona Project water shall be as provided in the December 11, 1980, Central Arizona Project water delivery contract between the United States and the Ak-Chin Indian Community, except as otherwise provided by this Act and any contract executed pursuant to this Act.

Notwithstanding any other provision of this Act, nothing in paragraph (1) of this subsection shall enlarge or diminish the authority of the Secretary under existing law. Nothing in section 4 or any other provision of this Act shall reduce the Secretary's obligation to deliver to the Ak-Chin Reservation a permanent supply of fifty thousand acre-feet of surface water per annum as well as the water referred to in paragraph (2) of this subsection.

**(g) [Gila Project.]**—(1) The limitation in the first section of the Act of July 30, 1947 (61 Stat. 628) on the annual beneficial consumptive use in the Yuma Mesa Division of the Gila Project of no more than three hundred thousand acre-feet of Colorado River water shall be deemed to be a limitation of no more than two hundred and fifty thousand acre-feet, effective as provided in section 4 of this Act. (98 Stat. 2700)

EXPLANATORY NOTE

**Reference in the Text.** The Act of July 30, subsection 2(g)(1) appears in Volume II at page 1947(ch. 382, 61 Stat. 628) referred to in 858.

(2) Such two hundred and fifty thousand acre-feet of water shall not be used to irrigate more than thirty-seven thousand one hundred and eighty-seven acres of land in the Yuma Mesa Division, specifically: six thousand five hundred and eighty-seven acres in the North Gila Valley Irrigation District;

October 19, 1984

3434 AK-CHIN WATER RIGHTS SETTLEMENT ACT

ten thousand six hundred acres in the Yuma Irrigation District; and twenty thousand acres in the Yuma Mesa Irrigation and Drainage District. Additional land in the Yuma Mesa Irrigation and Drainage District may be irrigated if there is a corresponding reduction in the irrigated acreage in the other districts so that at no time are more than thirty-seven thousand one hundred and eighty-seven acres being irrigated in the Yuma Mesa Division.

(3) Pursuant to appropriations, the Secretary shall pay—

(A) \$5,400,000 to the Yuma Mesa Irrigation and Drainage District for the purpose of replacement, rehabilitation, and repair of the water delivery system within the Yuma Mesa Irrigation and Drainage District, including water pumping facilities; and

(B) \$2,000,000 to the Yuma Mesa Irrigation and Drainage District, \$1,000,000 to the Yuma Irrigation District, and \$1,000,000 to the North Gila Valley Irrigation District, for the purpose of on-farm and district water conservation and drainage measures. Such funds shall not be used as non-Federal contributions in connection with any other Federal programs requiring cost-sharing. None of the payments to be made by the Secretary to said districts under this subsection shall be treated as supplemental or additional benefits or reimbursable to the United States.

(4) The Secretary is authorized and directed to amend the repayment contracts, as amended, between the United States and said districts to conform to the provisions of this Act and to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this Act are discharged. The Secretary is authorized at the request of the districts or any one of them to issue a certificate acknowledging that the lands in the requesting district are free of the ownership and full cost pricing provisions of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of Yuma County, Arizona. Amendments to the districts' contracts relating to items other than those covered by this Act shall not be made without the consent of the irrigation districts.

(5) The Secretary shall be required to carry out his obligations in paragraphs (3) and (4) only if the Yuma Mesa Irrigation and Drainage District, the North Gila Valley Irrigation District, and the Yuma Irrigation District execute amendatory contracts necessary to carry out the provisions of this subsection, including specifically a waiver and release of any and all claims to the annual beneficial consumptive use of Colorado River water in excess of two hundred fifty thousand acre-feet as provided in paragraph (1) of this subsection.

**(h) [Damages required for failure to deliver water.]—**(1) If the facilities required to deliver water to the Ak-Chin Reservation as provided in this section are not completed by January 1, 1988, the Secretary shall pay damages measured by the replacement cost of water not delivered in that calendar year

October 19, 1984

AK-CHIN WATER RIGHTS SETTLEMENT ACT

3435

up to a limit of thirty-five thousand acre-feet. In addition and to mitigate the effects occasioned by the failure to deliver said water, the Secretary shall pay all operation, maintenance and replacement costs of on-reservation wells to produce up to forty thousand acre-feet of water in that year for use by the Community.

(2) Commencing January 1, 1989, the Secretary shall pay damages measured by the replacement cost of water not delivered under subsection (a) or (e) as appropriate, up to a limit of seventy-five thousand or seventy-two thousand acre-feet of water, irrespective of whether the facilities to deliver water to the Ak-Chin Reservation have been completed.

**(i) [Additional damages associated with failure to deliver additional water under subsection (b).]**—In any year in which the Ak-Chin Indian 'Community' requests additional water under subsection (b) and such water and associated canal capacity are available, if the Secretary fails to deliver that quantity of additional water, in addition to any damages which he is required to pay under subsection (h), he shall pay damages in an amount measured by the agricultural water service operation, maintenance, and replacement costs for the Central Arizona Project in effect during that year, plus 20 per centum, of such additional quantity of water as is not delivered. (98 Stat. 2701)

**(j) [Permanent water supply use.]**—The Ak-Chin Indian Community (hereafter in this Act referred to as the 'Community') shall have the right to devote the permanent water supply provided for by this Act to any use, including agricultural, municipal, industrial, commercial, mining, recreational or other beneficial use, in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1. The community is authorized to lease or enter into an option to lease, extend leases, exchange or temporarily dispose of water to which it is entitled for beneficial use in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1: *Provided*, That the term of any such lease shall not exceed 100 years and the Community may not permanently alienate any water right. In the event the Community leases, extends leases, exchanges or temporarily disposes of water, such action shall be pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary.

EXPLANATORY NOTE

**1992 Amendment.** Section 10 of the Act of October 24, 1992 (Public Law 102-497, 106 Stat. 3258) cited as the "Ak-Chin Water Use Amendments Act of 1992" amended section 2(j) by providing the language that appears above.

Prior to amendment, section 2(j) read as follows: "The Ak-Chin Indian Community shall have the right to devote the permanent water supply provided for by this Act to any use, including but not limited to agricultural, municipal,

October 19, 1984

3436 AK-CHIN WATER RIGHTS SETTLEMENT ACT

industrial, commercial, mining or recreational use." Section 10 of the 1992 Act appears in Volume V at page 3802.

**(k) [Allocation of water in excess of the Secretary's obligation to deliver.]**—The water referred to in subsection (f)(1) shall be for the exclusive use and benefit of the Ak-Chin Indian Community, except that whenever the aggregate water supply referred to in subsection (f) exceeds the quantity necessary to meet the obligations of the Secretary under this Act, the Secretary shall allocate on an interim basis to the Central Arizona Project any of the water referred to in subsection (f) which is not required for delivery to the Ak-Chin Indian Reservation under this Act.

**Sec. 3. (a) Discharge of Secretary's obligations.**—The obligation of the Secretary to acquire and deliver to the Community an interim water supply from 1984 through 1987 under section 2 of the Act of July 28, 1978 (Public Law 95-328, 92 Stat. 409.) shall be deemed to be fully discharged once—

(1) within sixty days of enactment of appropriations, the Secretary pays to the Community \$1,400,000 in a lump sum grant for economic development in fiscal year 1986;

(2) the Secretary of the Treasury, within thirty days after the date of enactment of this Act, has paid to the Community \$15,000,000 for general community purposes as provided in Public Law 98-396;

(3) within sixty days after the date of enactment of this Act the Secretary has provided to the Community grants for economic development purposes of \$2,000,000 from funds provided in Public Law 98-396 for the permanent water supply; and

(4) the Secretary has amended those repayment contracts between the United States and the Community to provide that all repayment obligations owing to the United States are discharged.

The Secretary is hereby authorized and directed to take such actions needed to amend the contracts referred to in paragraph (4).

**(b) [Ak-Chin authority to use and expend funds.]**—To carry out the purposes of this section the Ak-Chin Indian Community shall have the complete discretion to use and expend the funds referred to in this section. (98 Stat. 2701)

**Sec. 4. [Amendatory contracts required—Appropriation of funds required.]**—The provisions of sections 2 (f)(1) and (g) of this Act shall not take effect until—

(1) the amendatory contracts authorized by section 2(g) of this Act have been duly ratified and approved by each of the districts and executed by the United States; and

(2) the funds authorized to be paid to the districts by section 2(g)(3) of this Act have been appropriated and transferred to the districts.

October 19, 1984

AK-CHIN WATER RIGHTS SETTLEMENT ACT

3437

**Sec. 5. (a) [Obligations of the Secretary.]**—The obligations of the Secretary under section 3 of the Act of July 28, 1978 (92 Stat. 409; Public Law 95-328, 92 Stat. 411.), shall terminate upon the enactment of this Act. If the Secretary fails to acquire the water supply referred to in section 2(f)(1) of this Act by January 1, 1988, the Secretary shall be obligated—

(1) to deliver annually to the southeast corner of the Ak-Chin Indian Reservation eighty-five thousand acre-feet of water suitable for irrigation beginning January 1, 1988; and

(2) to provide as soon as possible, but not later than January 1, 2003, for the permanent delivery of such water.

(b) Failure to deliver water as specified in this section shall render the United States liable for damages measured by the replacement cost of water not delivered.

**Sec. 6. [Management plan required.]**—The Secretary shall establish a water management plan for the Ak-Chin Indian Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

**Sec. 7. (a) [\$1,000,000 appropriation to the fund.]**—There is hereby authorized to be appropriated the sum of \$1,000,000 for payment to the fund referred to in subsection (b). Subject to appropriations, the Secretary shall pay a sum of \$1,000,000 to such fund.

**(b) [Appropriated funds contingent upon formation of an equivalent fund for voluntary acquisition or conservation of Arizona water.]**—No portion of the sum referred to in subsection (a) shall be paid unless—

(1) the Central Arizona Water Conservation District establishes a fund to be administered by the District for voluntary acquisition or conservation of water from sources within the State of Arizona for use in central Arizona in years when water supplies are reduced; and

(2) the Central Arizona Water Conservation District has contributed the sum of not less than \$1,000,000 to such fund: *Provided*, That if the contribution of not less than \$1,000,000 by the District to such fund has not been fully paid as provided in this section within two years of the date of enactment of this Act, the authorization for appropriation and payment of the sum referred to in subsection (a) shall terminate.

**(c) [Severability.]**—If the provisions of this section are for any reason not implemented as herein provided, the other sections of this Act shall remain unaffected thereby. (98 Stat. 2702)

**Sec. 8. [Authority of the Secretary unaffected.]**—Nothing in this Act shall be construed to enlarge or diminish the authority of the Secretary with regard to the Colorado River.

**Sec. 9. [Authority limited.]**—No authority under this Act 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

October 19, 1984

3438 AK-CHIN WATER RIGHTS SETTLEMENT ACT

Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985. (98 Stat. 2702)

**Sec. 10. [Southern Arizona Water Rights Settlement Act of 1982 amendment.]**—(a) Section 311 of the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1283) is amended to read as follows:

"Sec. 311. The provisions of section 2415 of title 28, United States Code, shall apply to any action relating to water rights of the Papago Indian Tribe or of any member of such Tribe which is brought—

"(1) by the United States for, or on behalf of, such Tribe or member of such Tribe, or

"(2) by such Tribe."

(b) The amendment made by this section shall not apply with respect to any action filed prior to the date of enactment of this Act. (98 Stat. 2703)

EXPLANATORY NOTES

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

**Reference in the Text.** Section 311 of the Southern Arizona Water Rights Settlement Act of 1982 (Public Law 97-293, 96 Stat. 1283) referred to in section 10 appears in Volume IV at page 3358. The 1982 Act, as subsequently amended, also appears in Supplement II at page S1110.

**Legislative History.** H.R. 6206, Public Law 98-530 in the 98<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-1026. Passed the House September 17, 1984. Passed the Senate, amended, September 25, 1984. House concurred in Senate amendments October 2, 1984.

October 24, 1984

3439

**TRINITY RIVER BASIN FISH AND WILDLIFE  
MANAGEMENT ACT OF 1984**

An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes. (Act of Oct. 24, 1984, Public Law 98-541, 98 Stat. 2721, as amended by Act of October 2, 1992, Public Law 102-377, 106 Stat. 1328; by Act of November 13, 1995, Public Law 104-46, 109 Stat. 419; and by Act of May 15, 1996, Public Law 104-143, 110 Stat. 1338)

**Section 1. [Findings.]**—The Congress finds that—

(1) the construction of the Trinity River division of the Central Valley project in California, authorized by the Act of August 12, 1955 (69 Stat. 719), has substantially reduced the streamflow in the Trinity River Basin thereby contributing to damage to pools, spawning gravels, and rearing areas and to a drastic reduction in the anadromous fish populations and a decline in the scenic and recreational qualities of such river system;

(2) the loss of land areas inundated by two reservoirs constructed in connection with such project has contributed to reductions in the populations of deer and other wildlife historically found in the Trinity River Basin;

(3) the Act referred to in paragraph (1) of this section directed the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") to take appropriate actions to ensure the preservation and propagation of such fish and wildlife and additional authority was conferred on the Secretary under the Act approved September 4, 1980 (94 Stat. 1062), to take certain actions to mitigate the impact on fish and wildlife of the construction and operation of the Trinity River division;

(4) activities other than those related to the project including, but not limited to, inadequate erosion control and fishery harvest management practices, have also had significant adverse effects on fish and wildlife populations in the Trinity River Basin and are of such a nature that the cause of any detrimental impact on such populations cannot be attributed solely to such activities or to the project;

(5) Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration;

(6) a fish and wildlife management program has been developed by an existing interagency advisory group called the Trinity River Basin Fish and Wildlife Task Force; and

(7) the Secretary requires additional authority to implement a management program, in conjunction with other appropriate agencies, to achieve the long-term goals of restoring fish and wildlife populations in the Trinity River Basin, and, to the extent these restored populations will contribute to ocean

October 24, 1984

3440 TRINITY RIVER BASIN FISH AND WILDLIFE ACT

populations of adult salmon, steelhead, and other anadromous fish, such management program will aid in the resumption of commercial, including ocean harvest, and recreational fishing activities. (98 Stat. 2721, 110 Stat. 1338)

EXPLANATORY NOTES

**1996 Amendment.** Section 1 of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2721), as amended, is amended by the Act of May 15, 1996 (Public Law 104-143, 110 Stat. 1338)–(1) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; (2) by

adding after paragraph (4) paragraph (5) as it appears above, and (3) by amending paragraph (7), as so redesignated, to read as it appears above. The 1996 Act appears in Volume V at page 4077.

**Reference in the Text.** The Act of August 12, 1955 (69 Stat. 719) referenced above appears in Volume II at page 1235.

**Sec. 2. [Trinity River Basin Fish and Wildlife Management Program.]–**

(a) Subject to subsection (b), the Secretary, in consultation with the Secretary of Commerce where appropriate, shall formulate and implement a fish and wildlife management program for the Trinity River Basin designed to restore the fish and wildlife populations in such basin to the levels approximating those which existed immediately before the start of the construction referred to in section 1(1) and to maintain such levels. To the extent these restored fish and wildlife populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program is intended to aid in the resumption of commercial, including ocean harvest, and recreational fishing activities. The program shall include the following activities:

(1) The design, construction, operation, and maintenance of facilities to–

(A) rehabilitate fish habitats in the Trinity River between Lewiston Dam and Weitchpec and in the Klamath River downstream of the confluence with the Trinity River;

(B) rehabilitate fish habitats in tributaries of such river below Lewiston Dam and in the south fork of such river; and

(C) modernize and otherwise increase the effectiveness of the Trinity River Fish Hatchery, so that it can best serve its purpose of mitigation of fish habitat loss above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin.

(2) The establishment of a procedure to monitor (A) the fish and wildlife stock on a continuing basis, and (B) the effectiveness of the rehabilitation work.

(3) Such other activities as the Secretary determines to be necessary to achieve the long-term goal of the program.

(b)(1) The Secretary shall use the program described in section 1(5) of this Act as a basis for the management program to be formulated under subsection (a)

October 24, 1984

TRINITY RIVER BASIN FISH AND WILDLIFE ACT 3441

of this section. In formulating and implementing such management program, the Secretary shall be assisted by an advisory group called the Trinity River Basin Fish and Wildlife Task Force established under section 3.

(2) In order to facilitate the implementation of those activities under the management program over which the Secretary does not have jurisdiction, the Secretary shall undertake to enter into a memorandum of agreement with those Federal, State, and local agencies, and the Indian tribes, represented on the Task Force established under section 3. The memorandum of agreement should specify those management program activities for which the respective signatories to the agreement are primarily responsible and should contain such commitments and arrangements between and among the signatories as may be necessary or appropriate to ensure the coordinated implementation of the program.

(3) To the extent not provided for under a memorandum of agreement entered into under paragraph (2), the Secretary shall coordinate the activities undertaken under such management program with the activities of State and local agencies, and the activities of other Federal agencies, which have responsibilities for managing public lands and natural resources within the Trinity River Basin. (98 Stat. 2722, 110 Stat. 1339)

EXPLANATORY NOTE

**1996 Amendment.** Section 2(a) of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2721), as amended, is amended by the Act of May 15, 1996 (Public Law 104-143, 110 Stat. 1338)—(1) in the matter preceding paragraph (1)—(A) by inserting ", in consultation with the Secretary of Commerce where appropriate," after "Secretary"; and (B) by adding the following after "such levels.": "To the extent these restored fish and wildlife populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program is intended to aid in the resumption of commercial, including ocean harvest, and recreational fishing activities."

Paragraph (1)(A) of such section (98 Stat. 2722) is amended by striking "Weitchpec;" and inserting "Weitchpec and in the Klamath River downstream of the confluence with the Trinity River;"

Paragraph (1)(C) of such section (98 Stat. 2722) is amended by inserting before the period the following: ", so that it can best serve its purpose of mitigation of fish habitat loss above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin".

Section 2(b)(2) of such Act (98 Stat. 2722) is amended by striking "tribe" and inserting "tribes". (110 Stat. 1339)

The 1996 Act appears in Volume V at page 4077.

**Sec. 3. [Trinity River Basin Fish and Wildlife Task Force.]—(a)** There is established the Trinity River Basin Fish and Wildlife Task Force (hereinafter in this Act referred to as the "Task Force") which shall be composed of nineteen members as follows:

October 24, 1984

3442 TRINITY RIVER BASIN FISH AND WILDLIFE ACT

(1) One officer or employee of the California Department of Fish and Game to be appointed by the administrative head of such department.

(2) One officer or employee of the California Department of Water Resources to be appointed by the administrative head of such department.

(3) One member or employee of the California Water Resources Control Board to be appointed by such board.

(4) One officer or employee of the California Department of Forestry to be appointed by the administrative head of such department.

(5) One officer or employee of the United States Fish and Wildlife Service to be appointed by the Secretary.

(6) One officer or employee of the United States Bureau of Reclamation to be appointed by the Secretary.

(7) One officer or employee of the United States Bureau of Land Management to be appointed by the Secretary.

(8) One officer or employee of the United States Bureau of Indian Affairs to be appointed by the Secretary.

(9) One officer or employee of the United States Forest Service to be appointed by the Secretary of Agriculture.

(10) One officer or employee of the Natural Resources Soil and Conservation Service to be appointed by the Secretary of Agriculture.

(11) One officer or employee of the United States National Marine Fisheries Service to be appointed by the Secretary of Commerce.

(12) One individual to be appointed by the board of supervisors of Humboldt County, California.

(13) One individual to be appointed by the board of supervisors of Trinity County, California.

(14) One individual to be appointed by the Hoopa Tribe of the Hoopa Valley Indian Reservation, California.

(15) One individual to be appointed by the Yurok Tribe.

(16) One individual to be appointed by the Karuk Tribe.

(17) One individual to represent commercial fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the Pacific Coast Federation of Fishermen's Associations.

(18) One individual to represent sport fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the California Advisory Committee on Salmon and Steelhead Trout.

(19) One individual to be appointed by the Secretary, in consultation with the Secretary of Agriculture, to represent the timber industry.

Any vacancy on the Task Force shall be filled in the manner in which the original appointment was made.

(b) If any member of the Task Force who was appointed to the Task Force as an officer or employee of a United States department or agency or as an officer or employee of a California State department or board leaves such office or employment, he may continue as a member of the Task Force for not longer

October 24, 1984

TRINITY RIVER BASIN FISH AND WILDLIFE ACT 3443

than the end of the fourteen-day period beginning on the date he leaves such office or employment.

(c)(1) Members of the Task Force who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Task Force.

(2) No moneys authorized to be appropriated under this Act may be used to pay any member of the Task Force for service on the Task Force or to reimburse any agency or governmental unit for the pay of any such member for such service. Members of the Task Force who are not full-time officers or employees of the United States, the State of California (or a political subdivision thereof), or an Indian tribe, may be reimbursed for such expenses as may be incurred by reason of their service on the Task Force, as consistent with applicable laws and regulations.

(d) Task Force actions or management on the Klamath River from Weitchpec downstream to the Pacific Ocean shall be coordinated with, and conducted with the full knowledge of, the Klamath River Basin Fisheries Task Force and the Klamath Fishery Management Council, as established under Public Law 99-552. The Secretary shall appoint a designated representative to ensure such coordination and the exchange of information between the Trinity River Task Force and these two entities. (98 Stat. 2722, 110 Stat. 1339)

EXPLANATORY NOTES

**Reference in the Text.** The Act of October 27, 1986 (Public Law 99-552, 100 Stat. 3080) referenced in subsection 3(d) is an Act to provide for the restoration of the fishery resources in the Klamath River Basin. The 1986 Act appears in Volume V at page 3520.

**1996 Amendment.** Section 4(a) of the Act of May 15, 1996 (Public Law 104-143, 110 Stat. 1338) amends section 3(a) of this Act (98 Stat. 2722), as amended—(1) by striking "fourteen" and inserting "nineteen" (2) by striking "United States Soil Conservation Service" in paragraph (10) and inserting "Natural Resources Soil and Conservation Service"; and (3) by inserting after paragraph (14) the following:

"(15) One individual to be appointed by the Yurok Tribe.

"(16) One individual to be appointed by the Karuk Tribe.

"(17) One individual to represent commercial fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the Pacific Coast Federation of Fishermen's Associations.

"(18) One individual to represent sport fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the California Advisory Committee on Salmon and Steelhead Trout.

"(19) One individual to be appointed by the Secretary, in consultation with the Secretary of Agriculture, to represent the timber industry."

Sec. 4(b) of the 1996 Act further amends section 3 of this Act (98 Stat. 2722) by adding at the end thereof a new subsection (d) as it appears above.

Section 4(c) of the 1996 Act amends section 3(c)(2) of this Act (98 Stat. 2723) by adding at the end the following: "Members of the Task Force who are not full-time officers or employees of the United States, the State of California (or a political subdivision thereof), or an Indian tribe, may be reimbursed for such expenses as may be incurred by reason of their service on the Task Force, as consistent with applicable laws and regulations."

Section 4(d) of the 1996 Act provides that the

October 24, 1984

3444 TRINITY RIVER BASIN FISH AND WILDLIFE ACT

amendments made by subsection (a) shall apply with respect to actions taken by the Trinity River Basin Fish and Wildlife Task Force on and after 120 days after the date of the enactment of this Act. (110 Stat. 1340) Section 4 of the 1996 Act appears in Volume V at page 4078.

**Sec. 4. [Authorization of appropriations.]**—(a) Subject to subsection (b), there are authorized to be appropriated—

(1) after fiscal year 1985, and to remain available until October 1, 1998, for design and construction under the management program formulated under section 2(a), \$48,000,000, adjusted appropriately to reflect any increase or decrease in the engineering cost indexes applicable to the types of construction involved between (A) the month of May 1982, and (B) the date of enactment of any appropriation for such construction; and

(2) for the cost of operations, maintenance, and monitoring under that management program, \$2,400,000 for each of the fiscal years in the 13-year period beginning on October 1, 1985.

EXPLANATORY NOTES

**1996 Amendment.** Section 5(a) of the Act of May 15, 1996 (Public Law 104-143, 110 Stat. 1338) amended section 4(a) by (1) in paragraph (1) of this Act, by striking "October 1, 1995" and inserting in lieu thereof "October 1, 1998"; and (2) in paragraph (2), by striking "ten-year" and inserting in lieu thereof "13-year".

Section 5 of the 1996 Act appears in Volume V at page 4079.

**1995 Amendment.** Section 504 of the Act of November 13, 1995, (Public Law 104-46, 109 Stat. 402) amended section 4(a)(1) by striking "October 1, 1995" and inserting in lieu thereof

"October 1, 1996; and section 4(a)(2) by striking "ten-year" and inserting in lieu thereof "eleven-year".

Extracts from the 1995 Act appear in Volume V at page 4065.

**1992 Amendment.** The Act of October 2, 1992 (Public Law 102-377, 106 Stat. 1328) amended the amount authorized by section 4(a)(1) by increasing the authorized appropriation \$15,000,000 to \$48,000,000.

Extracts from the 1992 Act appear in Volume V at page 3758.

(b) No moneys appropriated under subsection (a) may be expended, and no moneys may be expended for carrying out Grass Valley Creek activities, after September 30, 1984, until the Secretary receives assurances satisfactory to him that—

(1) the State of California and the counties of Humboldt and Trinity in California will pay during each fiscal year (on the basis of such shares as the State and the counties mutually agree upon) to the Treasury of the United States an amount equal to 15 per centum of the total amount of money that is expended during that year (A) from appropriations made under subsection (a), and (B) for carrying out Grass Valley Creek activities; and

(2) the public utilities, water districts, and other direct purchasers of water and power from the Trinity River division of the Central Valley project

October 24, 1984

TRINITY RIVER BASIN FISH AND WILDLIFE ACT 3445

referred to in section 1(1) will pay (on the basis of such shares as are determined by the Secretary) to the Treasury of the United States, within such period of time and in such increments as are satisfactory to the Secretary, an amount equal to 50 per centum of the total amount of money that is expended (A) from appropriations made under subsection (a), and (B) for carrying out Grass Valley Creek activities.

(c) No moneys appropriated under subsection (a) may be expended for any construction described in section 2(a)(1)(A) below the confluence of Grass Valley Creek and the Trinity River until the construction of the debris dam referred to in subsection (d)(1) is completed.

(d) The Secretary is authorized to accept in-kind services as payment for obligations incurred under subsection (b)(1).

(e) Not more than 20 percent of the amounts appropriated under subsection (a) may be used for overhead and indirect costs. For the purposes of this subsection, the term "overhead and indirect costs" means costs incurred in support of accomplishing specific work activities and jobs. Such costs are primarily administrative in nature and are such that they cannot be practically identified and charged directly to a project or activity and must be distributed to all jobs on an equitable basis. Such costs include compensation for administrative staff, general staff training, rent, travel expenses, communications, utility charges, miscellaneous materials and supplies, janitorial services, depreciation and replacement expenses on capitalized equipment. Such costs do not include inspection and design of construction projects and environmental compliance activities, including (but not limited to) preparation of documents in compliance with the National Environmental Policy Act of 1969.

(f) Not later than December 31 of each year, the Secretary shall prepare reports documenting and detailing all expenditures incurred under this Act for the fiscal year ending on September 30 of that same year. Such reports shall contain information adequate for the public to determine how such funds were used to carry out the purposes of this Act. Copies of such reports shall be submitted to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(g) The Secretary shall periodically conduct a programmatic audit of the in-river fishery monitoring and enforcement programs under this Act and submit a report concerning such audit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(h) For purposes of this section, the term "Grass Valley Creek activities" means the following activities authorized by the Act of September 4, 1980 (94 Stat. 1062):

(1) The construction of the Grass Valley Creek debris dam.

(2) The construction, operation, and maintenance of the sand dredging system in Grass Valley Creek. (98 Stat. 2723, 110 Stat. 1340)

October 24, 1984

3446 TRINITY RIVER BASIN FISH AND WILDLIFE ACT

(i) Beginning in the fiscal year immediately following the year the restoration effort is completed and annually thereafter, the Secretary is authorized to seek appropriations as necessary to monitor, evaluate, and maintain program investments and fish and wildlife populations in the Trinity River Basin for the purpose of achieving long-term fish and wildlife restoration goals. (98 Stat. 2723, 110 Stat. 1341)

EXPLANATORY NOTES

**References 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.) referenced in subsection 4(e) appears in Volume IV at page 2492.

The Act of September 4, 1980 (94 Stat. 1062), referenced in subsection 4(h) appears in Volume IV at page 3198.

**1996 Amendment.** Section 5(b) of the Act of May 15, 1996 (Public Law 104-143, 110 Stat.

1338) further amended section 4 (98 Stat. 2723) of this Act (1) by designating subsection (d) as subsection (h); and (2) by inserting after subsection (c) the new subsections (d), (e), (f), and (g) as they appear above.

Section 5(c) of the 1996 Act further amends section 4 of this Act by inserting after subsection (h) a new subsection (i) as it appears above.

Section 5(b) of the 1996 Act appears in Volume V at page 4079.

**Sec. 5. [Preservation of rights.]**—Nothing in this Act shall be construed as establishing or affecting any past, present, or future rights of any Indian or Indian tribe or any other individual or entity.

**Sec. 6. [Short title.]**—This Act may be cited as the "Trinity River Basin Fish and Wildlife Management Act of 1984". (110 Stat. 1341)

EXPLANATORY NOTES

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

**1996 Amendments.** Sections 5 and 7 of the Act of May 15, 1996 (Public Law 104-143, 110 Stat. 1338) further amended this Act by inserting at the end thereof "Sec. 5" regarding Indian rights and "Sec. 6" providing a title for the 1984 Act.

Section 5 of the 1996 amendatory Act

appears in Volume V at page 4079.

**Legislative History.** H.R. 1438, Public Law 98-541 in the 98<sup>th</sup> Congress. Reported in the House from Merchant Marine and Fisheries; H.R. Rept. No. 98-1035, Pt. 1. Passed House September 24, 1984. Reported in the Senate from Environment and Public Works; S. Rept. No. 98-647. Passed Senate October 4, 1984.

**COLORADO RIVER BASIN SALINITY CONTROL ACT  
AMENDMENTS ACT**

An Act to amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes. ( Act of Oct. 30, 1984, Public Law 98-569, 98 Stat. 2933)

**Section 1. [Amendment of the Colorado River Basin Salinity Control Act-Section 201(b).]**—Section 201(b) of the Colorado River Basin Salinity Control Act (43 U.S.C. § 1591(b)), hereinafter referred to as the "Act", is amended by adding at the end thereof the following new sentence: "In determining the relative priority of implementing additional units or new self-contained portions of units authorized by section 202, the Secretary or the Secretary of Agriculture, as the case may be, shall give preference to those additional units or new self contained portions of units which reduce salinity of the Colorado River at the least cost per unit of salinity reduction."

EXPLANATORY NOTE

**References in the Text.** The Colorado River Basin Salinity Control Act of June 24, 1974 (Public Law 93-320, 88 Stat. 256, 43 U.S.C. § 1571.) as amended by the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1063), referred to repeatedly in this amendatory Act, appears in Volume IV at page 2857.

**Sec. 2. [Section 202.]**—(a) Section 202 of the Act (43 U.S.C. § 1592) is amended by inserting "(a)" after "Sec. 202.",  
(b) Section 202(a) of such Act, as amended by subsection (a), is amended—  
(1) in paragraph (1) by inserting before the period at the end thereof the following: ", and consisting of measures to replace incidental fish and wildlife values foregone";  
(2) in the second sentence of paragraph (2) by inserting "replacing canals and laterals with pipe," after "canals and laterals," and by inserting "implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone." after "efficient facilities";  
(3) in the third sentence of paragraph (2) by inserting ", or portion thereof," after "Grand Valley unit", by striking out "agencies" and inserting in lieu thereof "non-Federal entities", by inserting ", or portions thereof," after "water distribution systems", and by striking out "all obligations" and inserting in lieu thereof "the obligations specified in subsection (b)(2)";  
(4) in paragraph (2) by striking out the fourth, fifth, and sixth sentences;

October 30, 1984

3448 COLORADO RIVER BASIN SALINITY CONTROL ACT

(5) by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3);

(6) in paragraph (3) (as redesignated) by deleting the period at the end thereof and inserting ", and consisting of measures to replace incidental fish and wildlife values foregone."; and

(7) by adding at the end thereof the following new paragraphs:

"(4) Stage I of the Lower Gunnison Basin unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce seepage from canals and laterals in the Uncompahgre Valley, and consisting of measures to replace incidental fish and wildlife values foregone, essentially as described in the feasibility report and final environmental statement dated February 10, 1984. Prior to initiation of construction of stage I of the Lower Gunnison Basin unit, or of a portion of stage I, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Uncompahgre Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) relating to the continued operation and maintenance of the unit's facilities.

"(5) Portions of the McElmo Creek unit, Colorado, as components of the Dolores participating project, Colorado River Storage project, authorized by Public Law 90-537 (43 U.S.C. § 1501 note) and Public Law 84-485 (43 U.S.C. § 620 note), consisting of all measures and all necessary appurtenant and associated works to reduce seepage only from the Towaoc-Highline combined canal, Rocky Ford laterals, Lone Pine lateral, and Upper Hermana lateral, and consisting of measures to replace incidental fish and wildlife values foregone. The Dolores participating project shall have salinity control as a project purpose insofar as these specific facilities are concerned: *Provided*, That the costs of construction and replacement of these specific facilities shall be allocated by the Secretary to salinity control and irrigation only after consultation with the State of Colorado, the Montezuma Valley Irrigation District, Colorado, and the Dolores Water Conservancy District, Colorado: *And provided further*, That such allocation of costs to salinity control will include only the separable and specific costs of these specific facilities and will not include any joint costs of any other facilities of the Dolores participating project. Repayment of costs allocated to salinity control shall be subject to this Act. Repayment of costs allocated to irrigation shall be subject to the Acts which authorized the Dolores participating project, the Reclamation Act of 1902 (43 U.S.C. § 371 note), and Acts amendatory and supplementary thereto. Prior to initiation of construction of these specific facilities, or a portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Montezuma Valley, singly or in concert, will assume the

October 30, 1984

COLORADO RIVER BASIN SALINITY CONTROL ACT 3449

obligations specified in subsection (b)(2) relating to the continued operation and maintenance of the unit's facilities." (98 Stat. 2933)

EXPLANATORY NOTE

**References in the Text.** Public Law 90-537, River Storage Project Act", Act of April 11, 1956, (ch, 203, 70 Stat.105; 43 U.S.C. § 620 known as the "Colorado River Basin Project Act", Act of September 30, 1968 (82 Stat. 885; 43 U.S.C. § 1501 note) referenced above and on ff. pages, appears in Volume IV at page 2395. Amendments and annotations of the 1968 Act appear in Supplement II at page S995. Public Law 84-485, known as "The Colorado River Storage Project Act", Act of April 11, 1956, (ch, 203, 70 Stat.105; 43 U.S.C. § 620 note.), referenced above and on ff. pages, appears in Volume II at page 1249. Amendments to the 1956 Act appear in Volume IV at pages 2416, 2871, Supplement I at page S247, and in Supplement II at page S873.

(c) Section 202 of such Act is further amended by inserting at the end thereof the following new subsections:

"(b) In implementing the units authorized to be constructed pursuant to subsection (a), the Secretary shall carry out the following directions:

"(1) As reports are completed describing final implementation plans for the unit, or any portion thereof, authorized by paragraph (5) of subsection (a), and prior to expenditure of funds for related construction activities, the Secretary shall submit such reports to the appropriate committees of the Congress and to the governors of the Colorado River Basin States.

"(2) Non-Federal entities shall be required by the Secretary to contract for the long-term operation and maintenance of canal and lateral systems constructed pursuant to activities provided for in subsection (a): *Provided*, That the Secretary shall reimburse such non-Federal entities for the costs of such operation and maintenance to the extent the costs exceed the expenses that would have been incurred by them in the thorough and timely operation and maintenance of their canal and lateral systems absent the construction of a unit, said expenses to be determined by the Secretary after consultation with the involved non-Federal entities. The operation and maintenance for which non-Federal entities shall be responsible shall include such repairing and replacing of a unit's facilities as are associated with normal annual maintenance activities in order to keep such facilities in a condition which will assure maximum reduction of salinity inflow to the Colorado River. These non-Federal entities shall not be responsible, nor incur any costs, for the replacement of a unit's facilities, including measures to replace incidental fish and wildlife values foregone. The term replacement shall be defined for the purposes of this title as a major modification or reconstruction of a completed unit, or portion thereof, which is necessitated, through no fault of the non-Federal entity or entities operating and maintaining a unit, by design or construction inadequacies or by normal limits on the useful life of a facility. The Secretary is authorized to provide continuing technical assistance to

October 30, 1984

3450 COLORADO RIVER BASIN SALINITY CONTROL ACT

non-Federal entities to assure the effective and efficient operation and maintenance of a unit's facilities.

"(3) The Secretary may, under authority of this title, and limited to the purposes of this Act, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to organize private canal and lateral owners into formal organizations with which the Secretary may enter into a grant or contract to construct, operate, and maintain a unit's facilities.

"(4) In implementing the units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5) of subsection (a), the Secretary shall comply with procedural and substantive State water laws.

"(5) The Secretary may, under authority of this title and limited to the purposes of this Act, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to operate and maintain measures to replace incidental fish and wildlife values foregone.

"(6) In implementing the units authorized to be constructed pursuant to subsection (a), the Secretary shall implement measures to replace incidental fish and wildlife values foregone concurrently with the implementation of a unit's, or a portion of a unit's, related features.

"(c)(1) The Secretary of Agriculture may establish a voluntary cooperative salinity control program with landowners to improve on-farm water management and reduce watershed erosion on non-Federal lands and on lands under the control of the Department of Agriculture for the purpose of assisting in meeting the objectives of this title.

"(2) In carrying out such program, the Secretary of Agriculture shall—

"(A) identify salt-source areas and determine the salt load resulting from irrigation and watershed management practices;

"(B) develop, in consultation with the public and affected governmental interests, plans for implementing measures that will reduce the salt load of the Colorado River by improving on-farm irrigation water management including improvement of related laterals and by improving watershed erosion management practices, such measures to include voluntary replacement of incidental fish and wildlife values foregone;

"(C) provide technical and cost-sharing assistance for the voluntary implementation of plans through contracts and agreements with individuals or groups of owners and operators of farms, ranches, and other lands as well as with local governmental and nongovernmental entities such as irrigation districts and canal companies, except that a portion of the costs of implementing such plans shall be shared by the participants on the basis of benefits received and other appropriate factors, as determined by the Secretary of Agriculture, and except that such contracts and agreements shall provide for continuing operation and maintenance of measures installed

October 30, 1984

COLORADO RIVER BASIN SALINITY CONTROL ACT 3451

under this subsection, including measures to replace incidental fish and wildlife values foregone, without additional cost-sharing assistance;

"(D) provide continuing technical assistance for irrigation water management as well as monitoring and evaluation of changes in salt contributions to the Colorado River to determine program effectiveness;

"(E) carry out related research, demonstration, and education activities; and

"(F) in entering into contracts or agreements pursuant to section 202(c)(2)(C), require a minimum of 30 per centum cost sharing contribution from individuals or groups of owners and operators of farms, ranches, and other lands as well as from local governmental and nongovernmental entities such as irrigation districts and canal companies, unless the Secretary finds in his discretion that such cost-sharing requirement would result in a failure to proceed with needed on-farm measures.

"(3) The measures to be implemented in any particular salt source area shall be described in reports issued by the Secretary of Agriculture. Copies of the reports are to be submitted to—

"(A) the committees on Agriculture and Appropriations of the House of Representatives and the committees on Agriculture, Nutrition and Forestry and Appropriations of the Senate;

"(B) members of the advisory council established by section 204(a) of this title (43 U.S.C. § 1594.); and

"(C) the Governor of any State where measures are to be implemented.

No funds for implementation of proposed measures undertaken pursuant to this subsection may be expended until the expiration of sixty days after submission of the report of the Secretary of Agriculture.

"(4) The Secretary of Agriculture may use existing agencies as well as the services and facilities of the Commodity Credit Corporation to carry out the provisions of this subsection. The Secretary of Agriculture, in addition, may authorize participating agencies to utilize grants or cooperative agreements with conservation districts, local governmental agencies, colleges and universities, or others as appropriate to carry out the activities identified in this subsection. There is hereby authorized to be appropriated annually, to be available until expended, such funds as may be necessary to carry out the provisions of this subsection: *Provided*, That no disbursement shall be made by the Commodity Credit Corporation unless it has received funds to cover the amount thereof from appropriations available for the purpose of carrying out this Act.

"(5) The Secretary of Agriculture shall submit a report to Congress by January 1, 1988, and at each five-year interval thereafter, concerning the operation of the program authorized by this subsection. Such report shall contain an evaluation of the operation of such program and may include recommendations for such additional legislation as may be necessary to solve

October 30, 1984

3452 COLORADO RIVER BASIN SALINITY CONTROL ACT

identified salinity problems in areas designated by the Secretary of Agriculture and may include recommendations to utilize new technology and research related to such problems.". (98 Stat. 2933)

**Sec. 3. [Section 203(b).]**—Section 203(b) of the Act (43 U.S.C. § 1593(b)) is amended by—

(1) striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(2) inserting at the end thereof the following new paragraphs:

"(3) to develop a comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management and submit a report which describes the program and recommended implementation actions to the Congress and to the members of the advisory council established by section 204(a) of this title (43 U.S.C. § 1594.) by July 1, 1987;

"(4) to undertake feasibility investigations of saline water use and disposal opportunities, including measures and all necessary appurtenant and associated works, to demonstrate saline water use technology and to beneficially use and dispose of saline and brackish waters of the Colorado River Basin in joint ventures with current and future industrial water users, using, but not limited to, the concepts generally described in the Bureau of Reclamation Special Report of September 1981, entitled "Saline water use and disposal opportunities"; and

"(5) to undertake advance planning activities on the Sinbad Valley Unit, Colorado, as described in the Bureau of Land Management Salinity Status Report, covering the period 1978-1979 and dated February 1980."

**Sec. 4. [Section 205—Section 403(g)(2) of the Lower Colorado River Basin Project Act—Section 5(d)(5) of the Colorado River Storage Project Act.]**—(a) Section 205(a) of the Act (43 U.S.C. § 1595(a)) is amended by inserting "(a)" after "section 202" and by inserting after "total costs" the following: "(excluding costs borne by non-Federal participants pursuant to section 202(c)(2)(C)) of the on-farm measures authorized by section 202(c), of all measures to replace incidental fish and wildlife values foregone, and".

(b) Section 205(a)(1) of such Act is amended by inserting before "shall be nonreimbursable." the words "authorized by section 202(a) (1), (2), and (3), including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit, or separable feature thereof authorized by section 202(a) (4) and (5), including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c), including 70 per centum of the total costs of the associated measures to

October 30, 1984

COLORADO RIVER BASIN SALINITY CONTROL ACT 3453

replace incidental fish and wildlife values foregone,". Section 205(a)(1) of such Act is further amended by adding at the end thereof "The total costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5), of section 205(a)".

(c) Section 205(a)(2) of such Act (43 U.S.C. § 1595.) is amended by striking "Twenty-five per centum" and inserting in lieu thereof "The reimbursable portion".

(d) Section 205(a)(3) of such Act is amended to read as follows:

"(3) Costs of construction and replacement of each unit or separable feature thereof authorized by sections 202(a) (1), (2), and (3) and costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the units authorized by sections 202(a) (1), (2), and (3), 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 or within a period equal to the estimated life of the unit, separable feature thereof, or replacement, whichever is less, without interest from the date such unit, separable feature, or replacement is determined by the Secretary to be in operation."

(e) Section 205(a) of such Act is amended by inserting at the end thereof the following new paragraphs:

"(4)(i) Costs of construction and replacement of each unit or separable feature thereof authorized by sections 202(a) (4) and (5), costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the on farm measures authorized by section 202(c) or of the units authorized by sections 202(a) (4) and (5), and costs of implementation of the on-farm measures authorized by section 202(c) allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid as provided in subparagraphs (ii) and (iii), respectively, of this paragraph.

"(ii) Costs allocated to the upper basin shall be repaid with interest within a fifty-year period, or within a period equal to the estimated life of the unit, separable feature thereof, replacement, or on-farm measure, whichever is less, from the date such unit, separable feature thereof, replacement, or on-farm measure is determined by the Secretary or the Secretary of Agriculture to be in operation.

"(iii) Costs allocated to the lower basin shall be repaid without interest as such costs are incurred to the extent that money is available from the Lower Colorado River Basin development fund to repay costs allocated to the lower basin. If in any fiscal year the money available from the Lower Colorado River Basin development fund for such repayment is insufficient to repay the costs allocated to the lower basin, as provided in the preceding sentence, the deficiency shall be repaid with interest as soon as money becomes available in the fund for repayment of those costs.

"(iv) The interest rates used pursuant to this Act shall be determined by the Secretary of the Treasury, taking into consideration average market yields

October 30, 1984

3454 COLORADO RIVER BASIN SALINITY CONTROL ACT

on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period during the month preceding the date of enactment of the Act entitled "An Act to amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes" for costs outstanding at that date, or, in the case of costs incurred subsequent to enactment of such Act, during the month preceding the fiscal year in which the costs are incurred.

"(5) Costs of operation and maintenance of each unit or separable feature thereof authorized by section 202(a) and of measures to replace incidental fish and wildlife values foregone allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such costs are incurred. In the event that revenues are not available to repay the portion of operation and maintenance costs allocated to the Upper Colorado River Basin fund and to the Lower Colorado River Basin development fund in the year next succeeding the fiscal year in which such costs are incurred, the deficiency shall be repaid with interest calculated in the same manner as provided in section 205(a)(4)(iv). Any reimbursement due non-Federal entities pursuant to section 202(b)(2) shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such operation and maintenance costs are incurred."

(f)(1) Section 205(b)(1) of such Act (43 U.S.C. § 1595.) is amended by inserting "authorized by section 202(a), costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c)," before "allocated for repayment". (98 Stat. 2937)

(2) Section 403(g)(2) of the Lower Colorado River Basin Project Act (43 U.S.C. § 1543(g)) is amended by inserting "the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures" before "payable from".

(g) Section 205(c) of the Act is amended by inserting "authorized by section 202(a), costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c)" before "allocated for".

(h) Section 5(d)(5) of the Colorado River Storage Project Act (43 U.S.C. § 620d(d)(5)) is amended by inserting ", the costs of measures to replace incidental fish and wildlife values foregone, and the costs of the on-farm measures" before "payable".

(i) Section 205(e) of the Act is amended by –

(1) striking out "of construction, operation, maintenance, and replacement of units";

(2) inserting "to the Upper Colorado River Basin Fund" after "allocated";

(3) inserting ", section 205(a)(4) and section 205(a)(5)" after section 205(a)(3);

and

October 30, 1984

COLORADO RIVER BASIN SALINITY CONTROL ACT 3455

(4) inserting ", for the construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and for the implementation of on-farm measures" after "salinity control units".

**Sec. 5. [Section 208.]**—(a) Section 208(a) of the Act (43 U.S.C. § 1598) is amended by striking out "and not then if disapproved by said committees,".

(b)(1) The second sentence of section 208(b) of the Act is amended by inserting "(a) or (b)" after "section 202".

(2) Section 208(b) of the Act is amended by inserting after the second sentence thereof the following new sentence: "The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a), including measures as provided for in subsection (b) of section 202 of this title.". (98 Stat. 2939)

**Sec. 6. [Effective date.]**—The amendments made by this Act shall take effect upon enactment of this Act. (43 U.S.C. § 1591 note.)

**Sec. 7. [Compliance contingent on the availability of appropriations.]**—For purposes of complying with section 401 of the Congressional Budget Act of 1974 (2 U.S.C. § 651), the authorization provided under this Act is subject to the availability of appropriations. (98 Stat. 2940)

EXPLANATORY NOTES

**Reference in the Text.** Extracts from the Congressional Budget Act of 1974 (Public Law 93-344, 88 Stat. 298, 2 U.S.C. § 651.) referred to in section 7 of this Act appear in Supplement I at page S431.

**Legislative History.** H.R. 2790, Public Law

98-569 in the 98<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-1018. Passed the House October 2, 1984. Passed the Senate, amended October 5, 1984. House concurred in Senate amendments October 9, 1984.

**RECLAMATION PROJECT AUTHORIZATION ACT OF 1972  
AMENDMENTS ACT**

An Act to amend title I of the Reclamation Project Authorization Act of 1972 in order to provide for the establishment of the Russell Lakes Waterfowl Management Area as a replacement for the authorized Mishak National Wildlife Refuge, and for other purposes. (Act of October 30, 1984, Public Law 98-570, 98 Stat. 2941)

**[Section 1. Amendment of Reclamation Project Authorization Act of 1972.]**—Title I of the Reclamation Project Authorization Act of 1972 (Public Law 92-514; 86 Stat. 964), as amended by Public Law 96-375 (94 Stat. 1507), is amended as follows:

EXPLANATORY NOTE

**References in the Text.** The Act of October 20, 1972 (Public Law 92-514, 86 Stat. 964) as amended by the Act of October 3, 1980 (Public Law 96-375, 94 Stat.1507) appears in Volume IV on page 2748. The 1980 Act appears in Volume IV on page 3216. The 1972 Act was subsequently amended by section 22 of the Act of October 21, 1988 (Public Law 100-516, 102 Stat. 2577). The 1988 Act appears in Volume V at page 3593. Extracts of the 1972 Act, as amended through 1988, appear in Supplement II at page S1030.

(1) Section 101 is amended by striking out "establishing the Mishak National Wildlife Refuge and furnishing a water supply for the operation of the Mishak National Wildlife Refuge and the Alamosa National Wildlife Refuge and for conservation and development of other fish and wildlife resources" and inserting in lieu thereof "establishing the Russell Lakes Waterfowl Management Area and furnishing a water supply for the Russell Lakes Waterfowl Management Area by purchase of required lands with appurtenant water rights and a partial water supply for the operation of the Blanca Wildlife Habitat Area and Alamosa National Wildlife Refuge essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982". (98 Stat. 2941; 43 U.S.C. § 615aaa.)

(2) Section 101 is amended by inserting ", and as modified by the plans essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982" after "November 1979".

(3) Section 104(b)(2) is amended to read as follows:

"(2) To maintain the Alamosa National Wildlife Refuge and the Blanca Wildlife Habitat Area: *Provided*, That the amount of project salvaged water delivered to the Alamosa National Wildlife Refuge and the Blanca Wildlife Habitat Area shall not exceed five thousand three hundred acre-feet annually.". (98 Stat. 2941, 43 U.S.C. § 615ddd.)

October 30, 1984

RECLAMATION PROJECT AUTHORIZATION ACT OF 1972 3457

(4) Section 105 is amended by striking out "project plan" and inserting in lieu thereof "Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982".

(5) Section 105 is amended by adding at the end thereof a new sentence to read: "Private lands required for permanent project facilities may, at the option of the United States, be acquired by fee title." (98 Stat. 2942, 43 U.S.C. § 615eee.)

EXPLANATORY NOTE

**Legislative History.** H.R. 2823, Public Law 98-570 in the 98<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 98-1020, Pt. I. Passed House October 1, 1984. Passed Senate October 10, 1984.

August 15, 1985

3458

## SUPPLEMENTAL APPROPRIATIONS ACT OF 1985

An Act making supplemental appropriations for the fiscal year ending September 30, 1985, and for other purposes. (Act of August 15, 1985, Public Law 99-88, 99 Stat. 293)

\* \* \* \* \*

TITLE I  
CHAPTER IV  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation  
Construction Program

\* \* \* \* \*

**[Supplemental appropriations—Binding agreements with non-Federal entities required.]**—For an additional amount for the Department of the Interior, Bureau of Reclamation, "Construction program", for the design and construction of the Animas-La Plata Project, Colorado and New Mexico; Buffalo Bill Dam Project, Wyoming; Boulder Canyon Project, Arizona and Nevada; and the Headgate Rock Project, Arizona, to remain available until expended, \$14,300,000; of which \$1,000,000 shall be available for transfers to the Upper Colorado River Basin Fund as authorized by section 5 of the Act of April 11, 1956 (43 U.S.C. 620d): *Provided*, That of the total appropriated, the amount for program activities which can be financed by the Reclamation Fund may be derived from that Fund: *Provided further*, That of the total appropriated, \$8,300,000 is appropriated pursuant to the Snyder Act (25 U.S.C. 13), to be expended by the Bureau of Reclamation for the purpose of designing and initiating construction of the Headgate Rock Hydroelectric Project, Arizona: *Provided further*, That none of the funds herein appropriated may be expended to undertake projects except under terms and conditions acceptable to the Secretary of the Interior as shall be set forth in binding agreements with those non-Federal entities desiring to participate in project construction. Each such agreement shall include a statement that the non-Federal entities are capable of and willing to participate in project cost-sharing and financing in accordance with terms of the agreement. At such time as the Secretary has executed a formal finding agreement and has determined that the non-Federal entities' financing plan demonstrates a reasonable likelihood of the non-Federal interest's ability to satisfy the terms and conditions of the agreement, the Secretary shall initiate construction at a project in accordance with such agreement: *Provided further*, That the funds appropriated herein shall lapse on June 30, 1986, if the agreement required herein for that project has not been executed.

August 15, 1985

SUPPLEMENTAL APPROPRIATIONS ACT OF 1985 3459

EXPLANATORY NOTE

**References in the Text.** The Act of April 11, 1956 (CH 203, 70 Stat. 105, 43 U.S.C. 620d) commonly known as the Colorado River Storage Project appears in Volume II at page 1248. Amendments and annotations of the 1956 Act appear in Supplement I at page S247 and Supplement II at page S873. The Snyder Act (25 U.S.C. 13) does not appear herein. The Act of October 19, 1984 (Public Law 98-530, 98 Stat. 2698) appears in Volume V at page 3431.

**[Costs for the enlargement of A Canal of the Klamath Project to be nonreimbursable.]**—Within available funds, the Secretary of the Interior is directed to use \$600,000 to rehabilitate the A Canal of the Klamath Project and associated facilities in accordance with the Federal reclamation laws for the purpose of providing flood control for adjacent lands on a nonreimbursable basis.

**[Costs for the enlargement of a certain portion of the WEB pipeline to be nonreimbursable.]**—The Secretary of the Interior is authorized and directed to treat all costs associated with the enlargement of the portion of the WEB pipeline which will carry water to the North Dakota State line at Emmons County as nonreimbursable and to enter into such contracts, amendments to contracts or other agreements as necessary.

**[Funds made available to meet obligations of the AK-Chin Water Rights Settlement Act.]**—Within available funds, the Secretary of the Interior is directed to make \$10,400,000 available to meet the obligations of Public Law 98-530, dated October 19, 1984, to three irrigation districts. These funds will be used for replacement, rehabilitation, and repair of the water delivery system within the Yuma Mesa Irrigation and Drainage District including water pumping facilities; for on-farm and district water conservation and drainage measures of the Yuma Mesa Irrigation and Drainage District, the Yuma Irrigation District, and the North Gila Valley Irrigation District; and for payment to the fund established by the Central Arizona Water Conservation District for voluntary acquisition or conservation of water from sources within the State of Arizona for use in central Arizona in years when water supplies are reduced.

**[Hooker Dam or alternative.]**—In order to expedite the completion of the Hooker Dam or alternative of the Central Arizona Project (1) the selection of the preferred site for the Hooker Dam or alternative as authorized by section 301 of the Colorado River Basin Project Act shall be completed by August 15, 1985, (2) the initial draft environmental impact statement required for the Hooker Dam or alternative shall be completed and made available by September 1, 1986, (3) the final environmental impact statement for Hooker Dam or alternative shall be completed and made available by September 1, 1987, and (4) the Secretary of the Interior shall make a record of his decision as soon as practically possible after the completion of the final environmental impact statement. (99 Stat. 319)

August 15, 1985

3460 SUPPLEMENTAL APPROPRIATIONS ACT OF 1985

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EXPLANATORY NOTE

**Reference in the Text.** Section 301 of the Volume IV at page 2398.  
Colorado River Basin Project Act appears in

DEPARTMENT OF ENERGY

**[Memorandum of Understanding for the California-Oregon Transmission Project—Authority of the Federal Energy Regulatory Commission—Provisions of Public Law 98-360 apply—Authority of Bonneville Power Administration not affected—Transmission line named.]**—To the extent the Federal Energy Regulatory Commission has authority or jurisdiction under the Federal Power Act (16 U.S.C. § 791a.) of a Memorandum of Understanding for the California-Oregon Transmission Project, dated December 19, 1984 (50 F.R. 420, Jan. 3, 1985), as amended and supplemented by the Secretary of Energy prior to enactment of this paragraph, or of any contracts implementing such Memorandum, the Federal Energy Regulatory Commission shall exercise such authority or jurisdiction within 2 years after enactment of this paragraph or after the filing of any such contract, whichever is later, and the Commission shall adjust its procedures and practices to ensure completion of such exercise of administrative authority or jurisdiction within such 2-year period. Nothing in this paragraph shall be construed by the Commission or any court as affecting, changing or limiting the authority, jurisdiction or procedures of the Commission under the Federal Power Act concerning rates, charges, service, facilities, classification, access or other matters in regard to such project. Consistent with the provisions of Public Law 98-360 (98 Stat. 403) which authorized the Secretary of Energy to construct or participate in the construction of such project for the benefit of electric consumers of the Pacific Northwest and California and obtain compensation from non-Federal participants in such project, sufficient capacity shall be reserved, as recognized in such Memorandum, to serve the needs of the Department of Energy laboratories and wildlife refuges in California. The Secretary of Energy and the Federal Energy Regulatory Commission shall keep the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate fully and currently informed concerning the project, any changes in such Memorandum of Understanding (as so amended and supplemented), the implementing contracts, compensation, reserved capacity for such laboratories or refuges, actions under the Federal Power Act, and any related matters. Nothing in this Act or in the Memorandum shall in any way affect, modify, change, or expand the authorities or policies of the Bonneville Power Administration under existing law regarding wholesale power

August 15, 1985

SUPPLEMENTAL APPROPRIATIONS ACT OF 1985 3461

rates, transmission rates, or transmission access. The line constructed pursuant to the Memorandum is hereby named "The Harold T. (Bizz) Johnson California-Pacific Northwest Intertie line"[]

EXPLANATORY NOTE

**References in the Text.** Extracts from the Federal Power Act (16 U.S.C. § 791a.) referenced above appear in Volume I at pages 262 (Part. I) and 527 (Parts II and III). Amendments and annotations of Part I appear at pages S56-64 in Supplement I. Amendments and annotations of Part II and III appear at pages S99-107 in Supplement I. Amendments

and annotations also appear in Supplement II at pages S813 and S841.

The Memorandum of Understanding for the California-Oregon Transmission Project, dated December 19, 1984 (50 F.R. 420, Jan. 3, 1985) does not appear herein.

Extracts from Public Law 98-360 (98 Stat. 403) appear in Volume V at page 3399.

\* \* \* \* \*

EXPLANATORY NOTES

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

**Legislative History.** H.R. 2577, Public Law 99-88 in the 99<sup>th</sup> Congress. Reported in the House from Appropriations; H.R. Repts. No. 99-142 and No. 99-236 (Conference). Reported in the Senate from Appropriations, S. Rept. No. 99-82. Passed House June 6, 11, 12, 1985.

Passed Senate, amended, June 19, 20, 1985. House agreed to conference report; concurred in certain Senate amendments, in others with amendments, July 31, 1985. Senate agreed to conference report; concurred in certain House amendments, in another with amendment. House concurred in Senate amendment, August 1, 1985.

November 1, 1985

3462

**ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT  
OF 1986**

[Extract from] an Act making appropriations for energy and water development for the fiscal year ending September 30, 1986, and for other purposes. (Act of November 1, 1985, Public Law 99-141, 99 Stat. 564)

\* \* \* \* \*

**GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR**

\* \* \* \* \*

**Sec. 205. [Working Capital fund.]**—(a) Within 30 days after enactment of this Act, there shall be established in the Treasury of the United States a working capital fund to assist in the management of certain support activities of the Bureau of Reclamation (hereafter referred to as the "Bureau"), Department of the Interior. The fund shall be available without fiscal year limitation for expenses necessary for furnishing materials, supplies, equipment, work, and services in support of Bureau programs, and, as authorized by law, to agencies of the Federal Government and others. Such expenses may include the acquisition, replacement, and operation of a central computer and related automatic data processing equipment; engineering services; payroll and other management services; acquisition and replacement of equipment and facilities, including the purchase, lease, or rent of motor vehicles and aircraft within any limitations set forth in appropriations made to carry out the functions of the Bureau and such other activities as may be approved by the Director, Office of Management and Budget.

(b) The fund shall be credited with appropriations made for the purpose of providing or increasing capital. There are authorized to be transferred to the fund (at fair and reasonable values at the time of transfer) the inventories, equipment, receivables, and other assets, less the liabilities, related to the functions to be financed by the fund as determined by the Secretary of the Interior.

(c) The fund shall be credited with appropriations and other funds of the Bureau, and other agencies of the Department of the Interior, other Federal agencies, and other sources, for providing materials, supplies, equipment, work, and services as authorized by law. Such payments may be made in advance or upon performance.

(d) Charges to users will be at rates approximately equal to the costs of

November 1, 1985

ENERGY AND WATER APPROPRIATIONS ACT, 1986 3463

furnishing the materials, supplies, equipment, facilities, and services (including such items as depreciation of equipment and accrued annual leave).

(e) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(f) Funds that are not necessary to carry out the activities to be financed by the fund, as determined by the Secretary, shall be covered into miscellaneous receipts of the Treasury. (99 Stat. 571, 43 U.S.C. § 1472.)

\* \* \* \* \*

EXPLANATORY NOTE

**Legislative History** H.R. 2959, Public Law 99-141 in the 99<sup>th</sup> Congress. Reported in House from Appropriations; H.R. Repts. Nos. 99-195 and 99-307 (Conference). Reported in the Senate from Appropriations; S. Rept. No. 99-110. Passed House July 16, 1985. Passed Senate, amended, August 1, 1985. House agreed to conference report; receded and concurred in Senate amendments, in others with amendments. Senate agreed to conference report; concurred in House amendments October 17, 1985.

May 12, 1986

3464

## **GARRISON DIVERSION UNIT REFORMULATION ACT OF 1986**

An Act to implement certain recommendations made pursuant to Public Law 98-360. (Act of May 12, 1986, Public Law 99-294, 100 Stat. 418)

**Section 1. [Purpose and authorization.]**—The first section of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by striking out "That" and all that follows down through the period at the end of such section and substituting:

### EXPLANATORY NOTE

**Reference in the Text.** The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) referenced above and in subsequent sections of this Act, appears in Volume III at page 1841.

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

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

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

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

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

### EXPLANATORY NOTE

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

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

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

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

May 12, 1986

GARRISON DIVERSION UNIT REFORMULATION ACT 3465

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

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

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

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

EXPLANATORY NOTE

**Reference in the Text.** Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891) appears in Volume II at page 806. Amendments and annotations appear in Supplement I at pages S147-160 and in Supplement II at page S861.

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

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

May 12, 1986

3466 GARRISON DIVERSION UNIT REFORMULATION ACT

**Sec. 2. [Fish and wildlife conservation.]**—Section 2 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new subsections at the end thereof:

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

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

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

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

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

(100 Stat. 419)

**Sec. 3. [Irrigation facilities.]**—Section 5 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended to read as follows:

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

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

"(b)(1) The Secretary may not commence construction of the Sykeston Canal, the James River Feeder Canal, and James River channel improvements until

May 12, 1986

GARRISON DIVERSION UNIT REFORMULATION ACT 3467

60 days after the report required by section 5(c) of this Act has been completed and submitted to the Congress.

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

"(A) the New Rockford Canal;

"(B) the Oakes Test Area; and

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

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

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

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

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

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

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

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

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

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

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

May 12, 1986

3468 GARRISON DIVERSION UNIT REFORMULATION ACT

EXPLANATORY NOTE

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

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

EXPLANATORY NOTE

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

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

EXPLANATORY NOTE

**References in the Text.** Extracts from the Act of July 31, 1953 (67 Stat. 266) referenced above appear in Volume II at page 1114. The Leavitt Act, Act of July 1, 1932 (ch. 369, 47 Stat. 564) referenced above appears in Volume I at page 504.

"(f) The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations." (100 Stat. 419)

**Sec. 4. [Power.]**—Section 6 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended to read as follows:

"Sec. 6. [Power.]—(a) Municipal, rural, and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as established by section 9 of the

May 12, 1986

GARRISON DIVERSION UNIT REFORMULATION ACT 3469

Flood Control Act of 1944 (Act of December 22, 1944, 58 Stat.891), for the operation of such systems.

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

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the 3048. Amendments and annotations of the Department of Energy Organization Act, Act of 1977 Act appear in Supplement II at page August 4, 1977 (Public Law 95-91, 91 Stat. 565) S1063. referenced above appear in Volume IV at page

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

**Sec. 5. [Municipal, rural, and industrial water service.]**—The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

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

"(2) All planning, design, construction and operation of the municipal, rural, and industrial water systems authorized by this section shall be undertaken in accordance with a cooperative agreement between the Secretary and the State of North Dakota. Such cooperative agreement shall set forth in a manner acceptable to the Secretary the responsibilities of the State for:

May 12, 1986

3470 GARRISON DIVERSION UNIT REFORMULATION ACT

- "(A) needs assessments;
- "(B) feasibility studies;
- "(C) engineering and design;
- "(D) construction;
- "(E) operation and maintenance; and
- "(F) the administration of contracts pertaining to any of the foregoing.

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

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

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

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

**Sec. 6. [Specific features.]**—The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 443) is amended by adding the following new section at the end thereof:

"Sec. 8. [Specific features.]—(a)(1) In accordance with the recommendations of the Garrison Diversion Unit Commission Final Report and section 1 of this Act, the Sykeston Canal shall be constructed as a functional replacement for the Lonetree Dam and Reservoir. The Sykeston Canal shall be designed and constructed to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so that, in the opinion of the Secretaries of the Interior and State, no violation of the

May 12, 1986

GARRISON DIVERSION UNIT REFORMULATION ACT 3471

Boundary Waters Treaty of 1909 (36 Stat. 2448) would result. The Secretary may not commence construction on the Sykeston Canal until a master repayment contract consistent with the provisions of this Act between the Secretary and the appropriate non-Federal entity has been executed.

"(2) The Lonetree Dam and Reservoir shall remain an authorized feature of the Garrison Diversion Unit; however, construction funds may be requested by the Secretary for Lonetree Dam and Reservoir only after:

"(A) the Secretary has determined that there is a need for the dam and reservoir based on a contemporary appraisal using procedures such as those employed in the preparation of feasibility studies for water resources development projects submitted to Congress;

"(B) consultations with the Government of Canada have reached a conclusion satisfactory to the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909 would result from the construction and operation of the dam and reservoir; and

"(C) the Secretaries of the Interior and State have submitted the determinations required by subparagraphs (A) and (B) above to the Congress and 90 calendar days have elapsed.

"(b) Taayer Reservoir is deauthorized as a project feature. The Secretary is directed to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge." (100 Stat. 423)

**Sec. 7. [Excess crops.]**—The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433), is amended by adding the following new section at the end thereof:

"Sec. 9. [Excess crops.]—Until the construction costs of the facilities authorized in section 5 are repaid, the Secretary is directed to charge a "surplus crop production charge" equal to 10 percent of full cost, as defined in section 202(3) (A)-(C) of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1263, 43 U.S.C. § 390bb.), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year. The surplus crop production charge shall not apply to crops produced in the 5,000 acre Oakes Test Area for research purposes under the direction of the Secretaries of the Interior or Agriculture." (100 Stat. 423)

May 12, 1986

3472 GARRISON DIVERSION UNIT REFORMULATION ACT

EXPLANATORY NOTE

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

**Sec. 8. [Authorization of appropriations.]**—The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"Sec. 10. [Authorization of appropriations.]—(a)(1) There are authorized to be appropriated \$270,395,000 for carrying out the provisions of section 5(a) through section 5(c) and section 8(a)(1) of this Act. Such sums shall remain available until expended.

"(2) There is authorized to be appropriated \$67,910,000 for carrying out the provisions of section 5(e) of this Act. Such sums shall remain available until expended.

"(b)(1) There is authorized to be appropriated \$200,000,000 to carry out the provisions of section 7(a) of this Act. Such sums shall remain available until expended.

"(2) There are authorized to be appropriated \$61,000,000 to carry out the provisions of section 7(b) through section 7(d) of this Act. Such sums shall remain available until expended.

"(c) There is authorized to be appropriated for carrying out the remaining provisions of this Act \$80,535,000. No funds are authorized for the construction of the Lonetree Dam and Reservoir. There are also authorized to be appropriated such additional funds as may be necessary for operation and maintenance of the unit.

"(d) Any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of this Act." (100 Stat. 424)

**Sec. 9. [Wetlands Trust.]**—The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"Sec. 11. [Wetlands Trust.]—(a) [Federal contributions.]—From the sums appropriated under section 10 of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual Federal contribution to a Wetlands Trust established by non-Federal interests in accordance with subsection (b), and operated in accordance with subsection (c), of this section. The amount of each such annual contribution shall be as follows:

"(1) For fiscal year 1986: \$2,000,000.

"(2) For each of the fiscal years 1987 through 1990: 3 percent of the total amount appropriated under section 10 of this Act, but not to exceed \$500,000 for each such fiscal year.

"(3) For each fiscal year after 1990: 5 percent of the total amount appropriated under section 10 of this Act, but only if a contribution to the

May 12, 1986

GARRISON DIVERSION UNIT REFORMULATION ACT 3473

Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of North Dakota from non-Federal funds. The contributions of the State of North Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary.

"(4) The total Federal contribution pursuant to this Act shall not exceed \$12,000,000.

"(b) [Structure of the trust.]—A Wetlands Trust shall be eligible to receive Federal contributions pursuant to subsection (a) if it complies with each of the following requirements:

"(1) The Trust is established by non-Federal interests as a non-profit corporation under the laws of North Dakota with its principal office in North Dakota.

"(2) The Trust is under the direction of a Board of Directors which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

"(3) The Board of Directors of the Trust is comprised of 6 persons appointed as follows, each for a term of 2 years:

"(A) 3 persons appointed by the Governor of North Dakota.

"(B) 1 person appointed by the National Audubon Society.

"(C) 1 person appointed by the National Wildlife Federation.

"(D) 1 person appointed by the North Dakota Chapter of the Wildlife Society. Vacancies on the board are filled in the manner in which the original appointments were made. Any member of the Board of Directors is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office.

"(4) Members of the Board of Directors serve without compensation.

"(5) The corporate purposes of the Trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of North Dakota.

"(c) [Operations of the Trust.]—A Wetland Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

"(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

"(2) Pursuant to its corporate charter, the Trust has the authority to exercise each of the following powers:

"(A) The power to acquire lands and interests in land and power to acquire water rights. Lands or interests in lands may be acquired by the

May 12, 1986

3474 GARRISON DIVERSION UNIT REFORMULATION ACT

Trust only with the consent of the owner thereof and with the approval of the Governor of North Dakota.

"(B) The power to finance wetland preservation, enhancement, restoration, and management or wetland habitat programs

"(3) All funds received by the Trust under subsection (a) are invested in accordance with the requirements of subsection (d). No part of the principal amount of such funds may be expended for any purpose. The income received by the Trust from the investment of such funds shall be used by the Trust exclusively for its purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d).

"(4) The Trust agrees to provide such reports as may be required by the Secretary or the Governor of North Dakota and makes its records available for audit by Federal and State agencies.

"(d) [Investment of Trust Funds.]—The Secretary of the Interior, in consultation with the Secretary of the Treasury and the Governor of North Dakota, shall establish requirements for the investment of all amounts received by the Trust under subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that such amounts are invested in accordance with sound investment principles and shall ensure that persons managing such investments will exercise their fiduciary responsibilities in an appropriate manner." (110 Stat. 424)

**Sec. 10. [Soil surveys—Hazardous return flows.]**—Section 1 of the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. § 390a) is amended by inserting at the end thereof the following: "Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows."

**Sec. 11. [Short Title.]**—This Act may be referred to as the "Garrison Diversion Unit Reformulation Act of 1986".

**Sec. 12. [Compliance with Appropriations Act.]**—This Act to reformulate the Garrison Diversion Unit shall be deemed to meet all the time and substance requirements specified in the Fiscal Year 1986 Energy and Water Development Appropriations Act (Public Law 99-141, 99 Stat. 564). (100 Stat.426)

EXPLANATORY NOTES

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

**Reference in the Text.** The Act of July 31, 1953 (67 Stat. 266) referenced above appears in Volume II at page 1114. Extracts from Public Law 99-141 referenced above appear in Volume V at page 3462.

**Legislative History.** H.R. 1116, Public Law 99-294 in the 99<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 99-525 and Pt. 2. Considered and passed House Apr. 21, 23, 1986. Passed Senate April 28, 1986.

September 23, 1986

3475

## THE FRANKLIN EDDY CANAL ACT

An Act to designate the Closed Basin Conveyance Channel of the Closed Basin Division, San Luis Valley Project, Colorado, as the "Franklin Eddy Canal". (Act of September 23, 1986, Public Law 99-416, 100 Stat. 950)

**Section 1. [Designation of Closed Basin Conveyance Channel as the "Franklin Eddy Canal."]**—The Closed Basin Conveyance Channel of the Closed Basin Division, San Luis Valley Project, Colorado, constructed, operated, and maintained under Public Law 92-514 (86 Stat. 964), as amended, hereafter shall be known and designated as the "Franklin Eddy Canal."

**Sec. 2. [References to channel.]**—Any reference in any law, regulation, document, record, map, or other paper of the United States to the channel referred to in section "1" is hereby deemed to be a reference to the "Franklin Eddy Canal". (100 Stat. 950)

### EXPLANATORY NOTES

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

**References in the Text.** The Act of October 20, 1972 (Public Law 92-514, 86 Stat. 964) referenced above appears in Volume IV at page 2748. Amendments and annotations of the 1972 Act appear in Supplement II at page S1030.

**Legislative History.** H.R. 3443, Public Law 99-416 in the 99<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 99-297.

Passed House on October 9, 1985. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 99-233. Passed Senate on September 10, 1986.

**COLORADO RIVER FLOODWAY PROTECTION ACT**

An Act to establish a federally declared Floodway for the Colorado River below Davis Dam. (Act of October 8, 1986, Public Law 99-450, 100 Stat. 1129, 43 U.S.C. § 1600.)

**Section 1. [Short title.]**—This Act may be cited as the "Colorado River Floodway Protection Act".

**Sec. 2. [Findings and purposes.]—(a) [Findings.]**— The Congress finds that—

(1) there are multiple purposes established by law for the dams and other control structures administered by the Secretary of the Interior on the Colorado River;

(2) the maintenance of the Colorado River Floodway established in this Act is essential to accomplish these multiple purposes;

(3) developments within the Floodway are and will continue to be vulnerable to damaging flows such as the property damage which occurred in 1983 and may occur in the future;

(4) certain Federal programs which subsidize or permit development within the Floodway threaten human life, health, property, and natural resources; and

(5) there is a need for coordinated Federal, State, and local action to limit Floodway development.

**(b) [Purpose.]**—The Congress declares that the purposes of this Act are to—(1) establish the Colorado River Floodway, as designated and described further in this Act, so as to provide benefits to river users and to minimize the loss of human life, protect health and safety, and minimize damage to property and natural resources by restricting future Federal expenditures and financial assistance, except public health funds, which have the effect of encouraging development within the Colorado River Floodway; and

(2) establish a task force to advise the Secretary of the Interior and the Congress on establishment of the Floodway and on managing existing and future development within the Floodway, including the appropriateness of compensation in specified cases of extraordinary hardship. (100 Stat.1129)

**Sec. 3. [Definitions.]**—(a) The term "Committees" refers to the Committee on Natural Resources of the United States House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the United States Senate. (100 Stat. 1129, 43 U.S.C. § 1600a.)

EXPLANATORY NOTE

**1994 Amendment.** Section 16 of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4594) amended section 3(a) by striking "Interior and Insular Affairs" each place it appears and substituting "Natural Resources". The 1994 Act appears in Volume V at page 4061.

October 8, 1986

COLORADO RIVER FLOODWAY PROTECTION ACT 3477

(b) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than—

(1) general revenue-sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. § 1221);

(2) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(3) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(4) assistance for environmental studies, plans, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(5) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age, survivors, or disability insurance program. Such term also includes flood insurance described in sections 1322(a) and (b) of the National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572) as amended, on and after the dates on which the provisions of those sections become effective.

(c) The term "Secretary" means the Secretary of the Interior.

(d) The term "water district" means any public agency providing water service, including water districts, county water districts, public utility districts, and irrigation districts.

(e) The term "Floodway" means the Colorado River Floodway established in section 5 of this Act.

EXPLANATORY NOTE

**References in the Text.** The State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. § 1221) does not appear herein. Sections 1322(a) and (b) of the National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572) as amended, do not appear herein. Other extracts appear in Volume IV at page 2353.

**Sec. 4. [Colorado River Floodway Task Force.]—(a) [Membership]**—To advise the Secretary and the Congress there shall be a Colorado River Floodway Task Force, which shall include one representative of—

(1) each State (appointed by the Governor) and Indian reservation in which the Floodway is located;

(2) each county in which the Floodway is located;

(3) a law enforcement agency from each county in which the Floodway is located;

(4) each water district in which the Floodway is located;

(5) the cities of Needles, Parker, Blythe, Bullhead City, Yuma, Laughlin,

October 8, 1986

3478 COLORADO RIVER FLOODWAY PROTECTION ACT

Lake Havasu City, Nevada (if and when incorporated), and Mojave County, Arizona Supervisor District No. 2 (chosen by, but not a member of the Board of Supervisors);

(6) the Chamber of Commerce from each county in which the Floodway is located;

(7) the Colorado River Wildlife Council;

(8) the Army Corps of Engineers;

(9) the Federal Emergency Management Agency (FEMA);

(10) the Department of Agriculture;

(11) the Department of the Interior; and

(12) the Department of State. (43 U.S.C. § 1600b.)

**(b) [State and local governments—Indians.]**—The task force shall be chartered and operate under the provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I) and shall prepare recommendations concerning the Colorado River Floodway, which recommendations shall deal with:

(1) the means to restore and maintain the Floodway specified in section 5 of this Act, including, but not limited to, specific instances where land transfers or relocations, or other changes in land management, might best effect the purposes of this Act;

(2) the necessity for additional Floodway management legislation at local, tribal, State, and Federal levels;

(3) the development of specific design criteria for the creation of the Floodway boundaries;

(4) the review of mapping procedures for Floodway boundaries;

(5) whether compensation should be recommended in specific cases of economic hardship resulting from impacts of the 1983 flood on property outside the Floodway which could not reasonably have been foreseen; and

(6) the potential application of the Floodway on Indian lands and recommended legislation or regulations that might be needed to achieve the purposes of the Floodway taking into consideration the special Federal status of Indian lands.

**(c) [Reports.]**—The task force shall exist for at least one year after the date of enactment of this Act, or until such time as the Secretary has filed with the Committees the maps described in subsection 5(b)(2). The task force shall file its report with the Secretary and the Committees within nine months after the date of enactment of this Act. (100 Stat. 1130)

EXPLANATORY NOTE

**References in the Text.** The Federal Advisory Committee Act, Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770; 5 U.S.C. App. I) appears, as amended, in Supplement I at page S482.

October 8, 1986

COLORADO RIVER FLOODWAY PROTECTION ACT 3479

**Sec. 5. [Colorado River Floodway]**—(a) There is established the Colorado River Floodway as identified and generally depicted on maps that are to be submitted by the Secretary. (43 U.S.C. § 1600c.)

(b) Within eighteen months after the date of enactment of this Act, the Secretary, in consultation with the seven Colorado River Basin States, represented by persons designated by the Governors of those States, the Colorado River Floodway Task Force, and any other interested parties shall:

(1) complete a study of the tributary floodflows downstream of Davis Dam;

(2) define the specific boundaries of the Colorado River Floodway so that the Floodway can accommodate either a one-in-one hundred year river flow consisting of controlled releases and tributary inflow, or a flow of forty thousand cubic feet per second (cfs), whichever is greater, from below Davis Dam to the Southerly International Boundary between the United States of America and the Republic of Mexico.

(c)(1) The Secretary shall conduct, at least once every five years, a review of the Colorado River Floodway and make, after notice to and in consultation with appropriate chief executive officers of States, counties, municipalities, water districts, Indian tribes, or equivalent jurisdictions in which the Floodway is located, and others, such minor and technical modifications to the boundaries of the Floodway as are necessary solely to reflect changes that have occurred in the size or location of any portion of the floodplain as a result of natural forces, and as necessary pursuant to subsection (c) of section (7) of this Act.

(2) If, in the case of any minor and technical modification to the boundaries of the Floodway made under the authority of this subsection, an appropriate chief executive officer of a State, county, municipality, water district, Indian tribe, or equivalent jurisdiction, to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, the Secretary shall submit to the chief executive officer a written justification for his failure to make modifications consistent with such comments or proposals. (100 Stat. 1131)

EXPLANATORY NOTE

**1998 Amendments.** Subsection 901(d) of the Act of November 10, 1998 (Public Law 105-362, 112 Stat. 3289) amended section 5 as follows:

(1) [Repeal of requirements.]—Section 5(b) is amended as follows:

(A) by striking "(b)(1)" and inserting "(b)";

(B) by striking paragraphs (2) and (3); and

(c) by redesignating clauses (i) and (ii) as paragraphs (1) and (2), respectively.

Prior to repeal, paragraphs (2) and (3) read as follows:

"(2) As soon as practicable after the determination of the Floodway boundary pursuant to this subsection, the Secretary shall prepare and file with the Committees maps depicting the Colorado River

October 8, 1986

3480 COLORADO RIVER FLOODWAY PROTECTION ACT

Floodway, and each such map shall be considered a standard map to be adhered to by all agencies and shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map may be made. Each such map shall be on file and available for public inspection in the Office of the Commissioner of the Bureau of Reclamation, Department of the Interior, and in other appropriate offices of the Department.

(3) The Secretary shall provide copies of the Colorado River Floodway maps to—

(A) the chief executive officer of each State, county, municipality, water district, Indian tribe, or equivalent jurisdiction in

which the Floodway is located,

(B) each appropriate Federal agency, including agencies which regulate Federal financial institutions, and

(c) each federally insured financial institution which serves the geographic area as one of its primary markets."

(2) [Conforming amendment.]—Section 5(c)(1) is amended by striking "the appropriate officers referred to in paragraph (3) of subsection (b)," and inserting "appropriate chief executive officers of States, counties, municipalities, water districts, Indian tribes, or equivalent jurisdictions in which the Floodway is located,".

Section 901(d) of the 1998 Act appears in Volume V at page 4134.

**Sec. 6. [Limitations on Federal expenditures affecting the Floodway.]**—(a) Except as provided in section 7, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Floodway established under section 5 of this Act. (43 U.S.C. § 1600d.)

(b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if—

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date of enactment. (100 Stat. 1131)

**Sec. 7. [Exceptions—Grants—Loans.]**—Notwithstanding section 6, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Colorado River Floodway for—

(a) any dam, channel or levee construction, operation or maintenance for the purpose of flood control, water conservation, power or water quality;

(b) other remedial or corrective actions, including but not limited to drainage facilities essential to assist in controlling adjacent high ground water conditions caused by flood flows;

(c) the maintenance, replacement, reconstruction, repair, and expansion, of publicly or tribally owned or operated roads, structures (including bridges), or facilities: *Provided*, That, no such expansion shall be permitted unless—

(1) the expansion is designed and built in accordance with the procedures and standards established in section 650.101 of title 23, Code of Federal

October 8, 1986

COLORADO RIVER FLOODWAY PROTECTION ACT 3481

Regulations, and the following as they may be amended from time to time;  
and

(2) the boundaries of the Floodway are adjusted to account for changes in flows caused, directly or indirectly, by the expansion;

(d) military activities essential to national security;

(e) any of the following actions or projects, but only if the Secretary finds that the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(1) projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects;

(2) the establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto;

(3) projects eligible for funding under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 4601-4 through 11);

(4) scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. § 5145 and 5146) and are limited to actions that are necessary to alleviate the emergency. Disaster assistance under other provisions of the Disaster Relief Act of 1974 (Public Law 93-288, as amended, 42 U.S.C. § 5121 note.) may also be provided with respect to persons residing within the Floodway, or structures or public infrastructure in existence or substantially under construction therein, on the date ninety days after the date of enactment of this Act: *Provided*, That, such persons, or with respect to public infrastructure the State or local political entity which owns or controls such infrastructure, had purchased flood insurance for structures or infrastructure under the National Flood Insurance Program, if eligible, and had taken prudent and reasonable steps, as determined by the Director of the Federal Emergency Management Agency, to minimize damage from future floods or operations of the Floodway established in the Act;

(6) other assistance for public health purposes, such as mosquito abatement programs;

(7) nonstructural projects for riverbank stabilization that are designed to enhance or restore natural stabilization systems;

(8) publicly or tribally financed, owned and operated compatible recreational developments such as regional parks, golf courses, docks, boat launching ramps (including steamboat and ferry landings), including compatible recreation uses and accompanying utility or interpretive

October 8, 1986

3482 COLORADO RIVER FLOODWAY PROTECTION ACT

improvements which are essential or closely related to the purpose of restoring the accuracy of a National Historical Landmark and which meet best engineering practices considering the nature of Floodway conditions; and

(9) compatible agricultural uses that do not involve permanent crops and include only a minimal amount of permanent facilities in the Floodway. (100 Stat. 1132; 43 U.S.C. § 1600e.)

EXPLANATORY NOTE

**References in the Text.** The Land and Water Conservation Fund Act of 1965, Act of September 3, 1964 (Public Law 88-578, 78 Stat. 897; 16 U.S.C. §§ 4601-4 through 11) appear in Volume III at page 1785. Amendments appear at page 1827 and in Supplement II at page S892. Extracts from The Disaster Relief Act of 1974, Act of May 22, 1974 (Public Law 93-288, 88 Stat. 143, as amended; 42 U.S.C. § 5121 note.) including sections 305 and 306 appear in Volume IV at page 2843.

**Sec. 8. [Certification of compliance.]**—The Secretary of the Interior shall, on behalf of each Federal agency concerned, make written certification that each agency has complied with the provisions of this Act during each fiscal year beginning after September 30, 1985. Such certification shall be submitted on an annual basis to the United States House of Representatives and the United States Senate on or before January 15 of each fiscal year. (100 Stat. 1134; 43 U.S.C. § 1600f.)

**Sec. 9. [Priority of laws.]**—Nothing contained in this Act 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 944, 59 Stat. 1219), the Flood Control Act of 1944 (58 Stat. 887), the decree entered by the Supreme Court of the United States in *Arizona v. California*, and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. § 618a), the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. § 620), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. § 1501). Furthermore, nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, tribe, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State, tribal, or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State or tribe, so that the two cannot be reconciled or consistently stand together. Inconsistencies shall be reviewed by the task force, and the task force shall make recommendations concerning such local laws. This Act shall in no way be interpreted to interfere with a State's or tribe's right to protect,

October 8, 1986

COLORADO RIVER FLOODWAY PROTECTION ACT 3483

rehabilitate, preserve, and restore lands within its established boundary. (100 Stat. 1134, 43 U.S.C. § 1600g.)

**Sec. 10. [Separability.]**—If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (100 Stat. 1134, 43 U.S.C. § 1600h.)

**Sec. 11. [Reports to Congress—Indians.]**—Within one year after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committees a report regarding the Colorado River Floodway, the task force's report, and the Secretary's recommendations with respect to the objectives outlined in section 4(b) of this Act. In making his report, the Secretary shall analyze the effects of this Act on the economic development of the Indian tribes whose lands are located within the Floodway. (100 Stat. 1134, 43 U.S.C. § 1600i.)

**Sec. 12. [Amendments regarding flood insurance.]**—(a) The National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572, 42 U.S.C. § 4029, 42 U.S.C. § 4001note.), as amended, is amended by adding the following section:

"Sec. 1322. (a) Owners of existing National Flood Insurance Act policies with respect to structures located within the Floodway established under section 5 of the Colorado River Floodway Protection Act shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act and to renew and transfer such policies.

EXPLANATORY NOTE

**References in the Text.** Extracts from the National Flood Insurance Act of 1968, Public Law 90-448 (82 Stat. 572) appear in Volume IV at page 2353.

"(b) No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the Colorado River Floodway Protection Act for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act. New construction includes all structures that are not insurable prior to that date.

"(c) The Secretary of the Interior may by rule after notice and comment pursuant to 5 U.S.C. § 553 establish temporary Floodway boundaries to be in effect until the maps required by section 5(b)(2) of the Colorado River Floodway

October 8, 1986

3484 COLORADO RIVER FLOODWAY PROTECTION ACT

Protection Act are filed, for the purpose of enforcing subsections (b) and (d) of this section.

"(d) A federally supervised, approved, regulated or insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section: *Provided*, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway.". (100 Stat. 1135)

**Sec. 13. [~~Federal leases—Public lands.~~]**—(a) No lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be granted after the date of enactment of this Act unless the Secretary determines that such lease would be consistent with the operation and maintenance of the Colorado River Floodway. (43 U.S.C. § 1600j.)

(b) No existing lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be extended beyond the date of enactment of this Act or the stated expiration date of its current term, whichever is later, unless the lessee agrees to take reasonable and prudent steps determined to be necessary by the Secretary to minimize the inconsistency of operation under such lease with the operation and maintenance of the Colorado River Floodway.

(c) No lease of lands owned in whole or part by the United States between Hoover Dam and Davis Dam below elevation 655.0 feet on Lake Mohave shall be granted unless the Secretary determines that such lease would be consistent with the operation of Lake Mohave.

(d) The provisions of subsections (a) and (b) of this section shall not apply to lease operations on Indian lands pursuant to a lease providing for activities which are exempted under section 7 of this Act.

(e) Subsections (a) and (b) of this section shall not apply to lands held in trust by the United States for the benefit of any Indian tribe or individual with respect to any lease where capital improvements, and operation and maintenance costs are not provided for by Federal financial assistance if the lessee, tribe, or individual has provided insurance or other security for the benefit of the Secretary sufficient to insure against all reasonably foreseeable, direct, and consequential damages to the property of the tribe, private persons, and the United States, which may result from the proposed lease.

**Sec. 14. [~~Notices and existing laws.~~]**—(a)(1) Nothing in this Act shall alter or affect in any way the provisions of section 702c of title 33, United States Code. (43 U.S.C. § 1600k.)

(2) The Secretary shall provide notice of the provisions of section 702c of title 33, United States Code, and this Act to all existing and prospective lessees of lands leased by the United States and within the Colorado River Floodway.

(b) Except as otherwise specifically provided in this Act, all provisions of the National Flood Insurance Act of 1968, as amended, and requirements of the National Flood Insurance Program ("NFIP") shall continue in full force and effect

October 8, 1986

COLORADO RIVER FLOODWAY PROTECTION ACT 3485

within areas wholly or partially within the Colorado River Floodway. Any maps or other information required to be prepared by this Act shall be used to the maximum extent practicable to support implementation of the NFIP. (42 U.S.C. § 4001 note.)

(c) The Secretary shall publish notice on three successive occasions in newspapers of general circulation in communities affected by the provisions of section 1322 of Public Law 90-448 (82 Stat. 572), as amended by this Act. (100 Stat. 1136)

**Sec. 15. [Authorization of appropriations.]**—There is authorized to be appropriated to the Department of the Interior \$600,000, through the end of fiscal year 1990, in addition to any other funds now available to the Department to discharge its duties to implement sections 4 through 14 of this Act: *Provided*, That by mutual agreement, such funds shall be made available to the Federal Emergency Management Agency to discharge its duties under section 12 of this Act: *Provided further*, That the provisions of sections 6 and 7 of this Act shall not be affected by this section: *And provided further*, in addition, Indian tribes may be eligible under Public Law 93-638 to contract for studies of Indian lands required under the provisions of this Act. (100 Stat. 1136; 43 U.S.C. § 1600l, 25 U.S.C. § 450 note.)

EXPLANATORY NOTES

**References in the Text.** Extracts from the National Flood Insurance Act of 1968, Act of August 1, 1968, Public Law 90-448 (82 Stat. 572) appear in Volume IV at page 2353. Public Law 93-638 does not appear herein.

**Legislative History.** H.R. 1246 (S.1696), Public Law 100-450 in the 100<sup>th</sup> Congress. Reported in the House from Interior and

Insular Affairs; H.R. Repts. No. 99-261. Passed the House on September 24, 1985. Reported in the Senate from Environment and Public Works; S. Repts. No. 99-410 accompanying S. 1696. Passed Senate, amended, in lieu of S. 1696 September 15, 1986. House concurred in Senate amendment September 23, 1986.

October 16, 1986

3486

## **ELECTRIC CONSUMERS PROTECTION ACT OF 1986**

An Act to amend the Federal Power Act to provide for more protection to electric consumers. (Act of October 16, 1986, Public Law 99-495, 100 Stat. 1243)

**Section 1. [Short title and table of contents.]-(a) [Short title.]**— This Act may be cited as the "Electric Consumers Protection Act of 1986." (16 U.S.C. § 791a note.)

**(b) [Table of contents.]**—

- Sec. 1. Short title and table of contents.
- Sec. 2. Amendments to section 7 of Federal Power Act.
- Sec. 3. Environmental consideration in licensing.
- Sec. 4. Relicensing procedures.
- Sec. 5. License term on relicensing.
- Sec. 6. Unauthorized activities.
- Sec. 7. Amendments to section 30 of Federal Power Act.
- Sec. 8. Amendments concerning certain small power production facilities subject to PURPA benefits.
- Sec. 9. Fees and charges for use of dams and structures.
- Sec. 10. Election and negotiations concerning contested projects subject to litigation.
- Sec. 11. Merwin Dam project.
- Sec. 12. Additional Commission enforcement authority.
- Sec. 13. Antitrust laws.
- Sec. 14. Landowner notification.
- Sec. 15. Applications for certain orders under Federal Power Act.
- Sec. 15A. Miscellaneous provisions.
- Sec. 16. Provision of information to Congress.
- Sec. 17. Savings provisions.
- Sec. 18. Effective date.

**Sec. 2. [Amendments to section 7 of Federal Power Act.]**—Section 7(a) of the Federal Power Act (16 U.S.C. § 791(a) et seq.) is amended as follows:

- (1) Insert "original" after "hereunder or".
- (2) Strike out "and in issuing licenses to new licensees under section 15 hereof" and substitute a comma. (100 Stat. 1243, 16 U.S.C. § 800.)

### EXPLANATORY NOTE

**Reference in the Text.** The Federal Power Act, Part I, Act of June 10, 1920 (ch. 285, 41 Stat. 1063) appears in Volume I at page 262. Amendments and annotations appear in Supplement I at page S56 and in Supplement II at pages S814, S815.

**Sec. 3. [Environmental consideration in licensing.]-(a) [Purposes of license.]**—Section 4(e) of the Federal Power Act is amended by adding the following at the end thereof. "In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3487

purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.". (16 U.S.C. § 797.)

**(b) [Amendments to Section 10(a).]**—Section 10(a) of such Act is amended as follows: (1) After "waterpower development," insert "for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat)". (16 U.S.C. § 803.)

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

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

(4) insert "(1)" after "(a)" and insert the following new paragraphs at the end thereof: "(2) In order to ensure that the project adopted will be best adapted to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

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

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

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

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

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

"(3) Upon receipt of an application for a license, the Commissions shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license."

**(c) [Fish and wildlife protection, mitigation, and enhancement.]**—Section 10 of the Federal Power Act is amended by adding the following at the end:

"(j)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and

October 16, 1986

3488 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

EXPLANATORY NOTE

**Reference in the Text.** The Fish and Wildlife Coordination Act appears in Volume II at page 839.

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

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

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

Subsection (i) shall not apply to the conditions required under this subsection." (100 Stat.1244, 16 U.S.C. § 803.)

**Sec. 4. [Relicensing procedures.]—(a) [Relicensing process.]—**Section 15 of the Federal Power Act (16 U.S.C. § 808.) is amended by inserting "(1)" after "(a)", by redesignating subsection (b) as subsection (f), and by adding the following at the end of subsection (a):

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

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3489

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

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

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

"(D) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers, including, among other relevant considerations, the reasonable costs and reasonable availability of alternative sources of power, taking into consideration conservation and other relevant factors and taking into consideration the effect on the provider (including its customers) of the alternative source of power, the effect on the applicant's operating and load characteristics, the effect on communities served or to be served by the project, and in the case of an applicant using power for the applicant's own industrial facility and related operations, the effect on the operation and efficiency of such facility or related operations, its workers, and the related community. In the case of an applicant that is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation may be included.

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

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

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

"(3) In the case of an application by the existing licensee, the Commission shall also take into consideration each of the following:

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

"(B) The actions taken by the existing licensee related to the project which affect the public.

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

October 16, 1986

3490 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

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

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

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

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

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

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

"(2) When the Commission issues a new license (pursuant to this section) to an applicant which is not the existing licensee of the project and finds that it is not feasible for the new licensee to utilize the energy from such project without provision by the existing licensee of reasonable services, including transmission services, the Commission shall give notice to the existing licensee and the new licensee to immediately enter into negotiations for such services and the costs demonstrated by the existing licensee as being related to the

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3491

provision of such services. It is the intent of the Congress that such negotiations be carried out in good faith and that a timely agreement be reached between the parties in order to facilitate the transfer of the license by the date established when the Commission issued the new license. If such parties do not notify the Commission that within the time established by the Commission in such notice (and if appropriate, in the judgment of the Commission, one 45-day extension thereof), a mutually satisfactory arrangement for such services that is consistent with the provisions of this Act has been executed, the Commission shall order the existing licensee to file (pursuant to section 205 of this Act (16 U.S.C. § 824d)) with the Commission a tariff, subject to refund, ensuring such services beginning on the date of transfer of the project and including just and reasonable rates and reasonable terms and conditions. After notice and opportunity for a hearing, the Commission shall issue a final order adopting or modifying such tariff for such services at just and reasonable rates in accordance with section 205 of this Act and in accordance with reasonable terms and conditions. The Commission, in issuing such order, shall ensure the services necessary for the full and efficient utilization and benefits for the license term of the electric energy from the project by the new licensee in accordance with the license and this Part, except that in issuing such order the Commission—

"(A) shall not compel the existing licensee to enlarge generating facilities, transmit electric energy other than to the distribution system (providing service to customers) of the new licensee identified as of the date one day preceding the date of license award, or require the acquisition of new facilities, including the upgrading of existing facilities other than any reasonable enhancement or improvement of existing facilities controlled by the existing licensee (including any acquisition related to such enhancement or improvement) necessary to carry out the purposes of this paragraph;

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

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

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

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

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

**(b) [Conforming amendments.]—**(1) Section 15(a) of the Federal Power Act is amended by striking out "original" each place it appears and substituting "existing". (16 U.S.C. § 808.)

October 16, 1986

3492 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

(2) Section 14(b) of such Act is amended by striking out the first sentence. (16 U.S.C. § 807.)

**(c) [Commission review.]**—In order to ensure that the provisions of Part I of the Federal Power Act, as amended by this Act, are fully, fairly, and efficiently implemented, that other governmental agencies identified in such Part I are able to carry out their responsibilities, and that the increased workload of the Federal Energy Regulatory Commission and other agencies is facilitated, the Commission shall, consistent with the provisions of section 309 of the Federal Power Act, review all provisions of that Act requiring an action within a 30-day period and, as the Commission deems appropriate, amend its regulations to interpret such period as meaning "working days", rather than "calendar days" unless calendar days is specified in such Act for such action. (100 Stat.1245, 16 U.S.C. § 825h note.)

**Sec. 5. [License term on relicensing.]**—Section 15 of the Federal Power Act is amended by adding the following after subsection (d) (as added by section 4 of this Act):

"(e) Except for an annual license, any license issued by the Commission under this section shall be for a term which the Commission determines to be in the public interest but not less than 30 years, nor more than 50 years, from the date on which the license is issued.". (100 Stat. 1248)

**Sec. 6. [Unauthorized activities.]**—Section 23(b) of the Federal Power Act is amended by inserting "(1)" after "(b)" and by adding the following at the end thereof:

"(2) No person may commence any significant modification of any project licensed under, or exempted from, this Act unless such modification is authorized in accordance with terms and conditions of such license or exemption and the applicable requirements of this Part. As used in this paragraph, the term 'commence' refers to the beginning of physical on-site activity other than surveys or testing.". (100 Stat. 1248, 16 U.S.C. § 817.)

**Sec. 7. [Amendments to Section 30 of Federal Power Act.]—(a) [State or local conduits.]**—Section 30(b) of the Federal Power Act is amended by inserting after "15 megawatts" the following: "(40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes)". (16 U.S.C. § 823a.)

**(b) [NMFS.]**—Section 30(c) of the Federal Power Act is amended by inserting "National Marine Fisheries Service" after "the Fish and Wildlife Service" in both places such term appears.

**(c) [Fees for studies.]**—Section 30 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(e) The Commission, in addition to the requirements of section 10(e), shall establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3493

agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended." (100 Stat. 1248)

**Sec. 8. [Amendments concerning certain small power production facilities subject to PURPA benefits.]—(a) New dams and diversions seeking PURPA benefits.]—**Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. § 824a-3.) is amended by inserting the following new subsections after subsection (i) and by redesignating subsection (j) as subsection (l):

"(j) [New dams and diversions.]—Except for a hydroelectric project located at a Government dam (as defined in section 3(10) of the Federal Power Act (16 U.S.C. § 796.)) at which non-Federal hydroelectric development is permissible, this section shall not apply to any hydroelectric project which impounds or diverts the water of a natural watercourse by means of a new dam or diversion unless the project meets each of the following requirements:

"(1) [No substantial adverse effects.]—At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

"(2) [Protected rivers.]—At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

"(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

"(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

"(3) [Fish and wildlife terms and conditions.]—The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

"(k) [Definition of new dam or diversion.]—For purposes of this section, the

October 16, 1986

3494 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

term 'new dam or diversion' means a dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)".

EXPLANATORY NOTE

**Reference in the Text.**—Extracts from the Public Utility Regulatory Policies Act of 1978, Act of November 9, 1978 (Public Law 95-617, 92 Stat. 3117; 16 U.S.C. § 824a-3.) appears in Volume IV at page 3137. Section 210 appears at page 3157. Amendments and annotations of the 1978 Act appear in Supplement II at page S1071.

**(b)[Effective date.]**—(1) Subsection (j) of section 210 of the Public Utility Regulatory Policies Act of 1978 (as amended by subsection (a) of this section) shall apply to any project for which benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 are sought and for which a license or exemption is issued by the Federal Energy Regulatory Commission after the enactment of this Act, except as otherwise provided in paragraph (2), (3) or (4) of this subsection. (16 U.S.C. § 824a-3 note.)

(2) Subsection (j) shall not apply to the project if the application for license or exemption for the project was filed, and accepted for filing by the Commission, before the enactment of this Act.

(3) Paragraphs (1) and (3) of such subsection (j) shall not apply if the application for the license or exemption for the project was filed before the enactment of this Act and accepted for filing by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to the requirement for environmental consultation) within 3 years after such enactment.

(4)(A) Paragraph (3) of subsection (j) shall not apply for projects where the license or exemption application was filed after enactment of this Act if, based on a petition filed by the applicant for such project within 18 months after such enactment, the Commission determines (after public notice and opportunity for public comment of at least 45 days) that the applicant has demonstrated that he had committed (prior to the enactment of this Act) substantial monetary resources directly related to the development of the project and to the diligent and timely completion of all requirements of the Commission for filing an acceptable application for license or exemption. Such petition shall be publicly available and shall be filed in such form as the Commission shall require by rule issued within 120 days after the enactment of this Act. The public notice required under this subparagraph shall include written notice by the petitioner to affected Federal and State agencies.

(B) In the case of any petition referred to in subparagraph (A), if the applicant had a preliminary permit and had completed environmental consultations (required by Commission regulations and procedures in effect

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3495

on January 1, 1986) prior to enactment, there shall be a rebuttable presumption that such applicant had committed substantial monetary resources prior to enactment.

(C) The applicant for a license or exemption for a project described in subparagraph (A) may petition the Commission for an initial determination under paragraph (1) of section 210(j) of the Public Utility Regulatory Policies Act of 1978 prior to the time the license or exemption is issued. If the Commission initially finds that the project will have substantial adverse effects on the environment within the meaning of such paragraph (1), prior to making a final finding under that paragraph the Commission shall afford the applicant a reasonable opportunity to provide for mitigation of such adverse effects. The Commission shall make a final finding under such paragraph (1) at the time the license or exemption is issued. If the Federal Energy Regulatory Commission has notified the State of its initial finding and the State has not taken any action described in paragraph (2) of section 210(j) before such final finding, the failure to take such action shall be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational, cultural, or scenic attributes for purposes of such finding.

(D) If a petition under subparagraph (A) is denied, all provisions of section 210(j) of the Public Utility Regulatory Policies Act of 1978 shall apply to the project regardless of when the license or exemption is issued.

**(c) [Application of Section 30(c).]**—Nothing in this Act shall affect the application of section 30(c) of the Federal Power Act to any exemption issued after the enactment of this Act. (16 U.S.C. § 823a note.)

**(d) [Study.]**—(1) The Commission shall conduct a study (in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332.)) of whether the benefits of section 210 of the Public Utility Regulatory Policies Act of 1978 and section 210 of the Federal Power Act should be applied to hydroelectric power facilities utilizing new dams or diversions (within the meaning of section 210(k) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. § 824a-3 note, 16 U.S.C. § 824i.)).

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. § 4332.) appears in Volume IV at page 2492.

(2) The study under this subsection shall take into consideration the need for such new dams or diversions for power purposes, the environmental impacts of such new dams and diversions (both with and without the application of the amendments made by this Act to sections 4, 10, and 30 of the Federal Power Act and section 210 of the Public Utility Regulatory Policies Act of 1978), the

October 16, 1986

3496 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

environmental effects of such facilities alone and in combination with other existing or proposed dams or diversions on the same waterway, the intent of Congress to encourage and give priority to the application of section 210 of Public Utility Regulatory Policies Act of 1978 to existing dams and diversions rather than such new dams or diversions, and the impact of such section 210 on the rates paid by electric power consumers.

(3) The study under this subsection shall be initiated within 3 months after enactment of this Act and completed as promptly as practicable.

(4) A report containing the results of the study conducted under this subsection shall be submitted to the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate while both Houses are in session.

(5) The report submitted under paragraph (4) shall include a determination (and the basis thereof) by the Commission, based on the study and a public hearing and subject to review under section 313(b) of the Federal Power Act, whether any of the benefits referred to in paragraph (1) should be available for such facilities and whether applications for preliminary permits (or licenses where no preliminary permit has been issued) for such small power production facilities utilizing new dams or diversions should be accepted by the Commission after the moratorium period specified in subsection (e). The report shall include such other administrative and legislative recommendations as the Commission deems appropriate. (16 U.S.C. § 8251.)

(6) If the study under this subsection has not been completed within 18 months after its initiation, the Commission shall notify the Committees referred to in paragraph (4) of the reasons for the delay and specify a date when it will be completed and a report submitted.

**(e) [Moratorium on application of PURPA to new dams.]—**Notwithstanding the amendments made by subsection (a) of this section, in the case of a project for which a license or exemption is issued after the enactment of this Act, section 210 of the Public Utility Regulatory Policies Act of 1978 shall not apply during the moratorium period if the project utilizes a new dam or diversion (as defined in section 210(k) of such Act) unless the project is either—

(1) a project located at a Government dam (as defined in section 3(10) of the Federal Power Act) at which non-Federal hydroelectric development is permissible, or

(2) a project described in paragraphs (2), (3), or (4) of subsection (b). (16 U.S.C. § 796.)

For purposes of this subsection, the term "moratorium period" means the period beginning on the date of the enactment of this Act and ending at the expiration of the first full session of Congress after the session during which the report under subsection (d) has been submitted to the Congress. (100 Stat. 1249, 16 U.S.C. § 824a-3 note.)

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3497

**Sec. 9. [Fees and charges for use of dams and structures.]—(a) [Fees and charges.]—**Section 10(e) of the Federal Power Act is amended as follows:

(1) Insert "(1)" after "(e)".

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

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

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

"(B) all licenses issued before such date which—

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

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

"(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon."

**(b) [Savings provisions—Indians.]—**Nothing in this Act shall affect any annual charge to be paid pursuant to section 10(e) of the Federal Power Act to Indian tribes for the use of their lands within Indian reservations. (100 Stat 1252, 16 U.S.C. § 803 note.)

**Sec. 10. [Election and negotiations concerning contested projects subject to litigation.]—(a) [Application of section.]—**This section applies to any relicensing proceeding initiated prior to October 1983 at the Federal Energy Regulatory Commission involving the following projects: Mokelumne (No. 137), California; Phoenix (No. 1061), California; Rock Creek/Cresta (No. 1962), California; Haas-King (No. 1988), California; Poole (No. 1388), California; Olmsted (No. 596), Utah; Weber (No. 1744), Utah; Rush Creek (No. 1389), California; and Shawano (No. 710), Wisconsin. The numbers in this subsection refer to Federal Energy Regulatory Commission project identification numbers for the existing licensee. This subsection shall also apply to any subsequent relicensing proceeding for any such project involving the same parties which results from the rejection, without prejudice, of an application in any of the proceedings specified in this subsection.

**(b) [Provisions not applicable if election made.]—**In the case of each project named in subsection (a), if the existing licensee fails to make an election

October 16, 1986

3498 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

under subsection (c) within 90 days after the enactment of this Act for negotiations under subsection (e)—

(1) the provisions of the Federal Power Act in effect one day prior to enactment of this Act; and (2) the amendments made by sections 3, 6, and 12 of this Act to the Federal Power Act; shall apply to the relicensing proceeding referred to in subsection (a). (16 U.S.C. § 791a.)

**(c) [Election procedures.]**—An existing licensee for any project named in subsection (a) may file an election with the Commission under this subsection. The election shall be filed in the manner required by the Commission. The election, subject to subsection (d), shall consist of an agreement that, in the case of the project concerned, the licensee will (1) enter into good faith negotiations under subsection (e) with each person (or group of persons) who filed a competing application for a new license for the project before October 7, 1983; and (2) be subject to the provisions of this section. Notice of the election to negotiate or the refusal thereof shall be filed with the Commission within the 90-day period.

**(d) [Acceptance or refusal to accept election.]**—Within 45 days after receiving notice from the Commission of an election to negotiate made by the existing licensee under subsection (c) for an applicable project, each competing license applicant (or group of applicants) referred to in subsection (a) may (1) accept the election, withdraw the competing application, enter into good faith negotiations in accordance with this section, and agree to be subject to the provisions of this section; or (2) refuse to accept such election. If the election to negotiate is not accepted by the competing applicant (or group) within the 45-day period, the relicensing proceeding for such project shall be continued and a new license issued solely in accordance with the Federal Power Act, as amended by this Act (including the amendments made by this Act to section 7 of the Federal Power Act). Notice of an election to negotiate or refusal must be filed with the Commission within the 45-day period.

**(e) [Negotiations.]**—If an election to negotiate is made pursuant to subsections (c) and (d) for any project, the existing licensee and the competing applicant shall commence negotiations for each of the following:

(1) Compensation to be provided by the existing licensee for the reasonable costs incurred by the competing applicant which are related to pursuing—

(A) the application in the applicable relicensing proceeding, including the costs of preparing, filing, and maintaining such application for the period ending December 31, 1985; and

(B) the litigation in the courts involving the application of section 7 of the Federal Power Act to the applicable relicensing proceeding.

(2) Compensation in an additional sum (which may be in money or electric power or both) representing a reasonable percentage (but not to exceed 100 percent) of the net investment of the existing licensee in the project, as of October 22, 1985 (as determined by the Commission, prior to the initiation of

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3499

such negotiations, in accordance with section 14(a) of the Federal Power Act). In making the determination of net investment, the Commission shall utilize all relevant records and data (which the existing licensee shall provide to the Commission) applicable to the project for the term of the existing license through October 22, 1985. The parties to the negotiations shall establish the method, period, and manner of providing all such compensation. (16 U.S.C. § 807.)

**(f) [Commission order.]**—If an election is made and accepted but negotiations under subsection (e) are not commenced by the parties within the time established by the Commission (or, if appropriate, in the judgment of the Commission, one 45-day extension thereof) or if a mutually satisfactory compensation arrangement that is consistent with the provisions of the Federal Power Act (16 U.S.C. § 791a.) has not been executed within such time, the Commission, after notice and opportunity for a hearing, shall issue an order establishing compensation in accordance with paragraphs (1) and (2) of subsection (e). In determining the amount of compensation, the Commission may accept any stipulations agreed to by the parties as a result of the negotiations. The Commission shall also take into consideration all of the following:

- (1) The quality of the relicensing proposals of the existing licensee and the competing applicant.
- (2) The net benefits to both parties and their customers of obtaining the new license.
- (3) The extent to which the applications filed by both parties were actively pursued (subject to the effect thereon of any action by the Commission or the applicable litigation) and filed with the Commission in good faith.
- (4) The extent of reliance by the competing applicant on the provisions of the Federal Power Act in effect prior to enactment of this Act and the detrimental impact of such reliance on the operations and on the service area of the applicant.

**(g) [Compensation—State and local governments.]**—The order of the Commission under this section shall establish the method, period, and manner of providing compensation under subsection (f), and such other reasonable terms and conditions concerning such compensation, consistent with the Federal Power Act, as the Commission deems appropriate. Any payment over a period of time shall include interest compounded at a rate based upon outstanding obligations of the United States of comparable maturity. The payment period shall not exceed one third of the new license term for the project. The order shall state the basis for the Commission's determination. The provisions of section 313 of the Federal Power Act shall apply to such order and determinations. The order (or any agreement reached by the parties by negotiation) shall be a condition of any annual license or new license (depending when the order is issued or agreement reached) issued to the existing licensee for this project. Nothing in this section shall be construed to affect the treatment, by a State regulatory authority for

October 16, 1986

3500 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

ratemaking purposes, of any compensation paid under this section. (16 U.S.C. § 825l.)

**(h) [Commission proceedings.]**—Upon mutual request of the parties to any negotiation under this section, the Commission may defer any determination of net investment for the applicable project until whenever it is required to issue an order under this section for such project. No new license shall be issued under the Federal Power Act (16 U.S.C. § 791a.) for the projects referenced in this section until there is full compliance, to the extent applicable, with this section. The Commission shall ensure that negotiations and any determinations and orders required by this section shall be conducted, made, and issued expeditiously and shall ensure that the parties do not delay. (100 Stat. 1252)

**Sec. 11. [Merwin Dam Project.]**—The amendments made by this Act, except for the amendments made by sections 6 and 12 shall not apply to the Federal Energy Regulatory Commission proceeding involving FERC Project Number 935 (FERC Project Number 2791), relating to the Merwin Dam in Washington State. (100 Stat. 1255)

**Sec. 12. [Additional Commission enforcement authority.]**—Part I of the Federal Power Act (16 U.S.C. § 823b.) is amended by adding the following new section at the end thereof:

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

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

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

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

"(c) [Civil penalty.]—Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this Part, any term, or condition of a license, permit, or exemption under this Part, or any order issued

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3501

under subsection (a) shall be subject to a civil penalty in an amount not to exceed \$10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

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

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

"(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in Part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct. (5 U.S.C. § 701 et seq.)

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

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

October 16, 1986

3502 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

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

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

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

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

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

**Sec. 13. [Antitrust laws.]**—Section 10(h) of the Federal Power Act (16 U.S.C. § 803.) is amended by inserting "(1)" after "(h)" and by adding the following new paragraph at the end thereof:

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

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3503

**Sec. 14. [Landowner and governmental agency notification.]**—Section 9 of the Federal Power Act (16 U.S.C. § 802.) is amended by inserting "(a)" after "9", by redesignating existing subsections (a) and (b) as paragraphs (1) and (2), and by adding the following at the end thereof:

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

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

"(2) Any Federal, State, municipal or other local governmental agency likely to be interested in or affected by such application." (100 Stat. 1257)

**Sec. 15. [Applications for certain orders under Federal Power Act.]**—Section 211(c)(2)(B) of the Federal Power Act (16 U.S.C. § 824j.) is amended by adding the following before the period: ": *Provided*, That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination of modification of an existing rate schedule: *Provided*, That such order shall not become effective until termination of such rate schedule or the modification becomes effective".

**Sec. 15A. [Miscellaneous provisions.]—(a) [Lake Tuscaloosa.]**—In the case of any hydroelectric power project located or proposed to be located at Lake Tuscaloosa, in Tuscaloosa County, Alabama, the provisions of the Federal Power Act (16 U.S.C. § 791a.) shall continue to apply, except that the Federal Energy Regulatory Commission shall not issue any permit, license, or exemption under that Act or under any other provision of law administered by the Commission to any person or public or private entity for such project or for any transmission or other facilities used in connection with, or appurtenant to, such project unless authorized by law enacted after the enactment of this Act.

**(b) [Time limitations for certain projects.]**—Notwithstanding the time limitations of section 13 of the Federal Power Act (16 U.S.C. § 806.), the Federal Energy Regulatory Commission upon the request of the licensee for FERC Projects Nos. 3033, 3034, and 3044 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend:

(1) the time required for commencement of construction of Projects Nos. 3033, 3034, and 3044 for up to a maximum of 3 consecutive 2-year periods for each such project,

(2) the time required for completion of construction of such projects for a reasonable period not to exceed 5 years after commencement of construction of each project, and

(3) the time required for the licensee to acquire the real property required for such projects for a period of up to 5 years from the date of enactment of the Act. The authorization for issuing extensions under paragraphs (2) and (3) of

October 16, 1986

3504 ELECTRIC CONSUMERS PROTECTION ACT OF 1986

this subsection shall terminate 3 years after enactment of this Act. The Commission to facilitate requests under this subsection may consolidate such requests.

**(c) [Henry's Fork.]**—(1) In the case of any project proposed to be sited on, or adjacent to, that portion of Henry's Fork of the Snake River, Idaho (including that segment originating at Big Springs), or its tributaries within one-half mile of their confluence with Henry's Fork of the Snake River, from its point of origin at Henry's Lake, Idaho to the point of its confluence with the backwaters of Ashton Reservoir, Idaho, the provisions of the Federal Power Act (16 U.S.C. § 791a.) shall continue to apply, except that the Federal Energy Regulatory Commission shall not issue any permit, license, or exemption under that Act or under any other provision of law administered by the Commission to any person or public or private entity for such project or for any transmission or other facilities used in connection with, or appurtenant to, such project unless authorized by law enacted after the enactment of this Act. The prohibition in the preceding sentence shall not apply to the application for a license under Part I of the Federal Power Act, as amended by this Act, to the Island Park Dam Hydropower Project (FERC Project No. 2973), except that in addition to the requirements of that Act, the Commission may issue such license only if the Commission determines that significant and permanent alternation [sic] of streamflow, habitat, water temperature, and quality will not occur as a result of the project. Nothing in this subsection shall be construed to affect the authority of this Commission to relicense, in accordance with the provisions of the Federal Power Act (16 U.S.C. § 791a.), as amended by this Act, the Ponds Lodge Hydropower Project (FERC Project No. 1413).

(2) Except as expressly provided in paragraph (1), nothing in this subsection shall affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law.

(3) The provisions of this subsection shall supersede the provisions of title VII (relating to the Henry's Fork of the Snake River, Idaho) of the Act entitled "An Act to amend the Wild and Scenic Rivers Act, and for other purposes" enacted during the 99<sup>th</sup> Congress, second session. (100 Stat. 1257)

**Sec. 16. [Provision of information to Congress.]**—The Federal Energy Regulatory Commission shall keep the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate fully and currently informed regarding actions of the Commission with respect to the provisions of Part I of the Federal Power Act. (100 Stat. 1259, 16 U.S.C. § 797b.

**Sec. 17. [Savings provisions.]**—(a) **[In general.]**—Nothing in this Act (16 U.S.C. § 797 note.) 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—

October 16, 1986

ELECTRIC CONSUMERS PROTECTION ACT OF 1986 3505

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

(2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(3) 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;

(4) affect, expand, or create rights to use transmission facilities owned by the Federal Government;

(5) alter, amend, repeal, interpret, modify, or be in conflict with, the Treaty rights or other rights of any Indian tribe;

(6) permit the filing of any competing application in any relicensing proceeding where the time for filing a competing application expired before the enactment of this Act; or

(7) modify, supersede, or affect the Pacific Northwest Electric Power Planning and Conservation Act. (100 Stat.1259, 16 U.S.C. § 839 note.)

**Sec. 18. [Effective date.]**—Except as otherwise provided in this Act, the amendments made by this Act (16 U.S.C. § 797 note.) shall take effect with respect to each license, permit, or exemption issued under the Federal Power Act (16 U.S.C. § 791a.) after the enactment of this Act. The amendments made by sections 6 and 12 of this Act shall apply to licenses, permits, and exemptions without regard to when issued. (100 Stat.1259)

EXPLANATORY NOTE

**Legislative History.** S. 426 (H.R. 44), accompanying H.R. 44. H.R. 44 passed House Public Law 99-495 in the 99<sup>th</sup> Congress. April 21, 1986; proceedings vacated and S. 426 Reported in the Senate from Energy and amended, passed in lieu June 10, 1986. Senate Natural Resources; S. Repts. No. 99-161. disagreed to House amendment. House agreed to conference report October 2, 1986. Senate Considered and passed Senate April 11, 15-17, 1986. Reported in the House from Energy and agreed to conference report October 3, 1986. Commerce; H.R. Repts. No. 99-507 Approved October 16, 1986.

## GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT

An Act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes. (Act of October 20, 1986, Public Law 99-503, 100 Stat. 1798)

**Section 1. [Short title.]**—This Act may be cited as the "Gila Bend Indian Agriculture and Reservation Lands Replacement Act".

**Sec. 2. [Congressional findings.]**—The Congress finds that:

(1) Section 308 of Public Law 97-293 (96 Stat. 1282) authorizes the Secretary of the Interior to exchange certain agricultural lands of the Gila Bend Indian Reservation, Arizona, for public lands suitable for farming.

### EXPLANATORY NOTE

**Reference in the Text.** Southern Arizona Water Rights Settlement Act of 1982, Section 308 of the Act of October 12, 1982 (Public Law 97-293 (96 Stat.1282) appears in Volume IV at page 3357. Title III of the 1982 Act, as subsequently amended, appears in Supplement II at page S1110.

(2) An examination of public lands within a one-hundred-mile radius of the reservation disclosed that those which might be suitable for agriculture would require substantial Federal outlays for construction of irrigation systems, roads, education and health facilities.

(3) The lack of an appropriate land base severely retards the economic self-sufficiency of the O'odham people of the Gila Bend Indian Reservation, contributes to their high unemployment and acute health problems, and results in chronic high costs for Federal services and transfer payments.

(4) This Act will facilitate replacement of reservation lands with lands suitable for sustained economic use which is not principally farming and do not require Federal outlays for construction, and promote the economic self-sufficiency of the O'odham Indian people.

**Sec. 3. [Definitions.]**—For the purposes of this Act, the term:

(1) "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.).

(2) "Tribe" means the Tohono O'odham Nation, formerly known as the Papago Tribe of Arizona, organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476).

(3) "Secretary" means the Secretary of the Interior.

(4) "San Lucy District" means the political subdivision of the Tohono O'odham Nation exercising governmental functions on the Gila Bend Indian Reservation. (100 Stat. 1798)

October 20, 1986

GILA BEND INDIAN LANDS REPLACEMENT ACT 3507

EXPLANATORY NOTE

**References in the Text.** Title III of the Colorado River Basin Project Act, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 887; 43 U.S.C. § 1521, *et seq.*) appears in Volume IV at pages 2398-2424. Amendments and annotations appear in Supplement II at page S995. The Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476) does not appear herein.

**Sec. 4. Assignment of tribal lands—Retained hunting, fishing, and gathering rights—Domestic water.**—(a) If the tribe assigns to the United States all right, title, and interest of the Tribe in nine thousand eight hundred and eighty acres of land within the Gila Bend Indian Reservation, the Secretary of the Interior shall pay to the authorized governing body of the Tribe the sum of \$30,000,000—\$10,000,000 in fiscal year 1988, \$10,000,000 in fiscal year 1989 and \$10,000,000 in fiscal year 1990—together with interest accruing from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to be used for the benefit of the San Lucy District. The Secretary shall accept any assignment under this subsection.

(b) The Tribe shall be permitted to continue to hunt, fish, and gather on any lands assigned to the United States under subsection (a) of this section so long as such lands remain in Federal ownership.

(c) With respect to any lands of the Gila Bend Indian Reservation which the Tribe does not assign to the United States, the Tribe shall have the right to withdraw ground water therefrom from wells having a capacity of less than thirty-five gallons per minute and which are used only for domestic purposes. (100 Stat. 1799)

**Sec. 5. [Authorization of appropriations.]**—Effective October 1, 1987 there is authorized to be appropriated such sums as may be necessary to carry out the purposes of section 4.

**Sec. 6. [Use of settlement funds—Acquisition of lands—Secretary's responsibility and liability limited—Per capita payments prohibited—Private land acquisition—Reserved water rights—Secretary's trust responsibilities—Water management plans.]**—(a) The Tribe shall invest sums received under section 4 in interest bearing deposits and securities until expended. The authorized governing body of the Tribe may spend the principal and the interest and dividends accruing on such sums on behalf of the San Lucy District for land and water rights acquisition, economic and community development, and relocation costs. Such income may be used by the Tribe for planning and administration related to land and water rights acquisition, economic and community development and relocation for the San Lucy District.

(b) The Secretary shall not be responsible for the review, approval or audit of the use and expenditure of the moneys referred to in this section, nor shall the

October 20, 1986

3508 GILA BEND INDIAN LANDS REPLACEMENT ACT

Secretary be subject to liability for any claim or cause of action arising from the Tribe's use and expenditure of such moneys. No portion of such moneys shall be used for per capita payments to any members of the Tribe.

(c) The Tribe is authorized to acquire by purchase private lands in an amount not to exceed, in the aggregate, nine thousand eight hundred and eighty acres. The Tribe and the United States shall be forever barred from asserting any and all claims for reserved water rights with respect to any land acquired pursuant to this subsection.

(d) The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian Reservation for all purposes. Land does not meet the requirements of this subsection if it is outside the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village. The Secretary may waive the requirements set forth in the preceding sentence if he determines that additional areas are appropriate.

(e) The Secretary shall establish a water management plan for any land which is held in trust under subsection (c) which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law. (100 Stat. 1799)

**Sec. 7. [Real property taxes.]**—(a) With respect to any private land acquired by the Tribe under section 6 and held in trust by the Secretary, the Secretary shall make payments to the State of Arizona and its political subdivisions in lieu of real property taxes.

(b) The Secretary is authorized to enter into agreements with the State of Arizona and its political subdivisions pursuant to which the Secretary may satisfy the obligation under subsection (a), in whole or in part, through the transfer of public land under his jurisdiction or interests therein, including land within the Gila Bend Indian Reservation or interests therein.

**Sec. 8. [Water delivery.]**—If the tribe acquires rights to the use of any water by purchase, rental, or exchange within the State of Arizona, the Secretary, at the request of the Tribe, shall deliver such water, at no cost to the United States, through the main project works of the Central Arizona Project to any land acquired under section 5(c), if, in the judgment of the Secretary, sufficient canal capacity exists to convey such water: *Provided*, That deliveries of such water shall not displace deliveries of Central Arizona Project water. The rate charged to the tribe for water delivery shall be the same as that charged by the Central Arizona Water Conservation District pursuant to contracts entered into pursuant to the

October 20, 1986

GILA BEND INDIAN LANDS REPLACEMENT ACT 3509

Colorado River Basin Project Act (43 U.S.C. § 1521, *et seq.*). Nothing in this section shall be deemed to obligate the Secretary to construct any water delivery system.

**Sec. 9. [Waiver and release of claims—Effective date.]—**(a) The Secretary shall be required to carry out the obligations of this Act only if within one year after the enactment of this Act the Tribe executes a waiver and release in a manner satisfactory to the Secretary of any and all claims of water rights or injuries to land or water rights (including rights to both surface and ground water) with respect to the lands of the Gila Bend Indian Reservation from time immemorial to the date of the execution by the Tribe of such a waiver.

(b) Nothing in this section shall be construed as a waiver or release by the Tribe of any claim where such claim arises under this Act.

(c) The assignment referred to in section 4 and the waiver and release referred to in this section shall not take effect until such time as the full amount authorized to be appropriated in section 4 has been appropriated by the Congress and paid to the Tribe. (100 Stat. 1800)

**Sec. 10. [Compliance with Budget Act—Effective date.]—**No authority under this Act 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 Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1987. (100 Stat. 1801)

EXPLANATORY NOTES

<b>Not Codified.</b> This Act is not codified in the U.S. Code.	House from Interior and Insular Affairs; H.R. Repts. No. 99-851. Passed House September 23, 1986. Passed Senate October 1, 1986.
<b>Legislative History.</b> H.R. 4216, Public Law 99-503 in the 99 <sup>th</sup> Congress. Reported in the	

October 22, 1986

3510

## HUNTLEY PROJECT IRRIGATION DISTRICT LAND CONVEYANCE ACT

An Act to direct the Secretary of the Interior to convey certain lands, withdrawn by the Bureau of Reclamation for townsite purposes, to the Huntley Project Irrigation District, Ballantine, Montana. (Act of October 22, 1986, Public Law 99-517, 100 Stat. 2967)

**Section 1. [Conveyance of certain lands.]**—Notwithstanding the provisions of the Act of April 16, 1906 (34 Stat. 116; 43 U.S.C. § 566), and the preliminary injunction issued in *National Wildlife Federation v. Burford*, Civ. No. 85-2238 (D.D.C. 1985), the Secretary of the Interior shall convey all right, title, and interest of the United States in and to the lands described in section 2 of this Act, to the Huntley Irrigation District, a recognized municipal corporation of the State of Montana, located in Ballantine, Montana; except that nothing in this Act is intended to affect the ownership of minerals located under the lands described in section 2 of this Act. Such conveyance shall be made without compensation from the Huntley Irrigation District, except for administrative costs not to exceed \$750 associated with the preparation of title to, and legal description of, such land. (100 Stat. 2967)

**Sec. 2. [Description of lands—Public lands.]**—The lands to be conveyed in section 1 are more completely defined as those reserved public lands withdrawn for Bureau of Reclamation purposes and further withdrawn for townsite and public purposes and are described as follows:

- (1) Osborn Public Park comprised of lot 19 of section 16, Township 2 North, Range 28 East, town of Osborn, County of Yellowstone, State of Montana;
- (2) Ballantine Public Park in Lots 1, 2, 3, 4, 5, 6, 7, 8, 13, and 14, Block 8, Southwest 1/4 of Section 5, Township 2 North, Range 29 East, town of Ballantine, County of Yellowstone, State of Montana;
- (3) Riverside Park located in tract 123 Southeast 1/4 of the Southwest 1/4 of Section 24, Township 2 North, Range 27 East, town of Huntley, County of Yellowstone, State of Montana;
- (4) Worden Town Park Reserve in Blocks 46, 49, and 51 of the Townsite located in the Southwest 1/4 of the Southeast 1/4 of Section 31, Township 3 North, Range 29 East, town of Worden, County of Yellowstone, State of Montana; and
- (5) Pompeys Pillar Park consisting of all of blocks 17, 19, 26, and those portions of block 15 south of the main canal right-of-way and block 21 north of the main canal right-of-way as shown on the Pompeys Pillar Township plat, approved by the Assistant Secretary of the Department of the Interior on September 22, 1916, and located in the west half of the southeast quarter of section 23, Township 3 North, Range 30 East, town of Pompeys Pillar, County of Yellowstone, State of Montana.

October 22, 1986

HUNTLEY PROJECT LAND CONVEYANCE

3511

**Sec 3. [Restriction on use of lands.]**—The lands conveyed under this Act shall continue to be reserved, maintained, and utilized for public park (including museums) and recreational purposes. If any of such lands [sic] is used for any other purpose, the title to such land, together with all improvements thereon, shall revert to the United States. (100 Stat. 2968)

EXPLANATORY NOTES

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

**Reference in the Text.** The Town Sites and Power Development Act, Act of April 16, 1906 (ch. 1631, 34 Stat. 116; 43 U.S.C. § 566) appears in Volume I at page 109.

**Legislative History.** H.R. 3005, Public Law

99-517 in the 99<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; Repts. No. 99-657. Passed House on June 26, 1986. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 99-386. Passed Senate on October 8, 1986. Approved October 22, 1986.

October 27, 1986

3512

**COORDINATED OPERATIONS AGREEMENT, SUISUN MARSH  
PRESERVATION AGREEMENT; AND SMALL RECLAMATION  
PROJECTS ACT AMENDMENTS**

An Act to implement the Coordinated Operations Agreement, the Suisun Marsh Preservation Agreement, and to amend the Small Reclamation Projects Act of 1956, as amended, and for other purposes. (Act of October 27, 1986, Public Law 99-546, 100 Stat. 3050)

**TITLE I-COORDINATED OPERATIONS**

**Sec. 101. [Central Valley project operation policy.]**—Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by—(a) inserting at the beginning "(a)"; and

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

"(2) The Secretary is further directed to operate the Central Valley project, in conjunction with the State water project, so that water supplied at the intake of the Contra Costa Canal is of a quality equal to the water quality standards contained in the Water Right Decision 1485 of the State of California Water Resources Control Board, dated August 16, 1978, except under drought emergency water conditions pursuant to a declaration by the Governor of California. Nothing in the previous sentence shall authorize or require the relocation of the Contra Costa Canal intake." (100 Stat. 3050)

**EXPLANATORY NOTE**

**Reference in the Text.** Act of August 26, 1937 (ch. 832, 50 Stat. 850) reauthorized the Central Valley Project for certain purposes, provided for the transfer of authority from the Secretary of War to the Secretary of the Interior, and provided for the delivery of stored waters under reclamation laws. The 1937 Act appears in Volume I at page 583. Also see index in Supplement II for references to specific subjects under the Central Valley Project heading.

**Sec. 102. [Reimbursable costs.]**—Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by inserting the following new subsection:

October 27, 1986

COORDINATED OPERATIONS AGREEMENT

3513

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

"(2) The Secretary of the Interior is authorized and directed to undertake a cost allocation study of the Central Valley project, including the provisions of this Act, and to implement such allocations no later than January 1, 1988." (100 Stat. 3050)

**Sec. 103. [Coordinated Operations Agreement.]**—Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by inserting the following new subsection:

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

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

"(2) the termination provisions of the agreement referred to in this subsection may only be exercised if the Secretary of the Interior or the State of California submits a report to Congress and sixty calendar days have elapsed (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date on which said report has been submitted to the Speaker of the House of Representatives and the President of the Senate for reference to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The report must outline the reasons for terminating the agreement and, in the case of the report by the Secretary of the Interior, include the views of the Administrator of the Environmental Protection Agency and the Governor of the State of California on the Secretary's decision." (100 Stat. 3051)

October 27, 1986

3514 SUISUN MARSH PRESERVATION AGREEMENT

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

**Sec. 105. [Adjustment of rates and ability to pay.]**—The Secretary of the Interior shall include in all new or amended contracts for the delivery of water from the Central Valley project a provision providing for the automatic adjustment of rates by the Secretary of the Interior if it is found that the rate in effect may not be adequate to recover the appropriate share of the existing Federal investment in the project by the year 2030. The contracts shall also include a provision authorizing the Secretary of the Interior to adjust determinations of ability to pay every five years. (100 Stat. 3051)

**Sec. 106. [Operation and maintenance deficits.]**—The Secretary of the Interior shall include in each new or amended contract for the delivery of water from the Central Valley project provisions ensuring that any annual deficit (outstanding or hereafter arising) incurred by a Central Valley project water contractor in the payment of operation and maintenance costs of the Central Valley project is repaid by such contractor under the terms of such new or amended contract, together with interest on any such deficit which arises on or after October 1, 1985, at a rate equal to the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 percent. (100 Stat. 3052)

TITLE II—SUISUN MARSH PRESERVATION AGREEMENT

**Sec. 201. [Authority to enter agreement.]**—The Secretary of the Interior is authorized to execute and implement the agreement between the Department of the Interior, the State of California and the Suisun Resources Conservation District (dated November 1, 1985).

**Sec. 202. [Cost-sharing provisions.]**—The costs of implementing the agreement provided in section 201 of this title shall be shared by the Bureau of Reclamation and the California Department of Water Resources in strict accordance with article 12 of that agreement: *Provided, That*—(a) payments made by the Secretary of the Interior shall not exceed 40 percent of the construction costs incurred under articles 6, 7, and 8 of the agreement, or \$50,000,000, whichever is less, plus or minus such amounts as are justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein;

October 27, 1986

SMALL RECLAMATION PROJECTS

3515

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

(c) the costs incurred by the United States for construction and for annual operation and maintenance in connection with the implementation of said agreement shall constitute an integral part of the cost of the Central Valley project. The Secretary shall allocate such costs to the reimbursable and nonreimbursable purposes served by the project. (100 Stat 3052)

**Sec. 203. [Costs incurred.]**—Costs incurred both before and after the date of execution of the agreement herein authorized are to be included in the total for determining the Federal share of construction, operation, and maintenance costs.

**Sec. 204. [Authorization of appropriations.]**—There are authorized to be appropriated for the implementation of the agreement referred to in Section 201 of this title \$50,000,000 plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein and, in addition thereto, in accordance with subsection 201(b) of this title, such sums as may be required for operation and maintenance: *Provided*, That no Federal funds may be expended pursuant to this title in advance of appropriations therefor: *Provided further*, That appropriations pursuant to this title shall remain available until expended without any fiscal year limitation. (100 Stat. 353)

TITLE III—SMALL RECLAMATION PROJECTS ACT AMENDMENTS

**Sec. 301. [Reference to Small Projects Act.]**—As used in this title, the term "the Act" means the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. § 422a et seq.). (100 Stat. 3053)

EXPLANATORY NOTE

**Reference in the Text.** The Small Reclamation Projects Act of 1956, as amended (Act of August 6, 1956, ch. 972, 10 Stat. 1044; 43 U.S.C. § 422a et seq.) appears in Volume II at page 1331. Amendments appear in Volume IV at pages 2641, 2932, 3203, and 3345. Amendments and annotations appear at pages S268-S278 and in Supplement II at page S875.

**Sec. 302. [Rehabilitation and betterment.]**—Section 1 of the Act is amended by inserting after the word "laws" ", with emphasis on rehabilitation and betterment of existing projects for purposes of significant conservation of water, energy and the environment and for purpose of water quality control,".

**Sec. 303. [Filing fee.]**—The second sentence of section 3 of the Act is amended by striking "\$1,000" and inserting in lieu thereof "\$5,000". (100 Stat. 3053, 43 U.S.C. § 422c.)

**Sec. 304.[Cost sharing.]—(a) [Loans—Grants.]**—Section 4(b) of the Act is amended by inserting (1) after (b) and by striking "by loan and grant under this Act" and inserting in lieu thereof "by loan and grant of Federal funds".

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

"(2) The Secretary shall require each organization to contribute toward the cost of the project (other than by loan and/or grant of Federal funds) an amount equal to 25 percent or more of the allowable estimated cost of the project: *Provided*, That the Secretary, at his discretion, may reduce the amount of such contribution to the extent that he determines that the organization is unable to secure financing from other sources under reasonable terms and conditions, and shall include letters from lenders or other written evidence in support of any funding of an applicant's inability to secure such financing in any project proposal transmitted to the Congress: *Provided further*, That under no circumstances shall the Secretary reduce the amount of such contribution to less than 10 percent of the allowable estimated total project costs. In determining the amount of the contribution as required by this paragraph, the Secretary shall credit toward that amount the cost of investigations, surveys, engineering, and other services necessary to the preparation of proposals and plans for the project as required by the Secretary, and the costs of lands and rights-of-way required for the project, and the \$5,000 fee described in section 3 of this Act. In determining the allowable estimated cost of the project, the Secretary shall not include the amount of grants accorded to the organization under section 5(b)". (100 Stat. 3053, 43 U.S.C. § 422d.)

**Sec. 305. [Soil survey.]**—Section 4(c) of the Act is amended by inserting the following after the first sentence: "Each project proposal transmitted by the Secretary to the Congress shall include a certification by the Secretary that an adequate soil survey and land classification has been made, or that the successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. Such proposal shall also include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows". (100 Stat. 3054, 43 U.S.C. § 422d.)

**Sec. 306. [Fish and wildlife, and flood control compatibility with crops projects.]**—Section 5(b) of the Act is amended by striking everything after the words "joint use facilities properly allocable to fish and wildlife enhancement or public recreation"; and substituting the following in lieu thereof:

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

October 27, 1986

SMALL RECLAMATION PROJECTS

3517

be nonreimbursable under general provisions of law applicable to projects constructed by the Secretary of the Army.". (100 Stat. 3054, 43 U.S.C. § 422e.)

**Sec. 307. [Loan repayment and interest]**—(a) Section 5(c)(1) of the Act is amended by striking "fifty" and inserting in lieu thereof "forty".

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

"(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient or by a limited recipient, as such terms are defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. § 390bb.), in excess of three hundred and twenty irrigable acres; or,

"(B) which is allocated to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhancement, or public recreation except that portion of such allocation attributable to furnishing benefits to a facility operated by an agency of the United States, which portion shall bear no interest."

(c) The remainder of section 5(c) of the Act is stricken in its entirety. (100 Stat. 3054, 43 U.S.C. § 422e.)

**Sec. 308. [Fish and wildlife funding.]**— Section 8 of the Act is amended by adding at the end thereof the following sentence: "The Secretary shall transfer to the Fish and Wildlife Service or to the National Marine Fisheries Service, out of appropriations or other funds made available under this Act, such funds as may be necessary to conduct the investigations required to carry out the purposes of this section.". (100 Stat. 3055, 43 U.S.C. § 422h.)

**Sec. 309. [Authorization and limitation.]—(a) [Effective date.]**—Section 10 of the Act is amended in the first sentence by inserting before "": *Provided*" and, effective October 1, 1986, not to exceed an additional \$600,000,000".

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

October 27, 1986

3518

VALIDATION OF POWER CONTRACTS

days, passed a joint resolution of disapproval for such a waiver." (100 Stat. 3055, 43 U.S.C. § 422j.)

**Sec. 310. [Transition rules—Effective date.]**—The provisions of Sections 303 and 308 of this title shall take effect upon enactment of this title. The provisions of sections 304(a) and 305 of this title shall be applicable to all proposals for which final applications are received by the Secretary after January 1, 1986. The provisions of Sections 302, 304(b), 306, and 307 shall be applicable to all proposals for which draft applications are received by the Secretary after August 15, 1986. (43 U.S.C. § 422a note.)

**Sec. 311. [Surplus Crops Report.]**—The Secretary of the Interior and the Secretary of Agriculture shall review the effect of the Small Reclamation Projects Act of 1956, as amended, on the operation and objectives of the programs of the Department of Agriculture dealing with the of surplus commodities as determined by the Secretary of Agriculture pursuant to the Agriculture Act of 1949, as amended (7 U.S.C. § 1421 note.), and shall jointly submit a report of their findings to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Interior and Insular Affairs and the Committee on Agriculture of the House of Representatives no later than 120 days from the date of enactment of this Act together with their recommendations, if any, for any changes to either or both programs to better achieve the objectives of such programs. (100 Stat. 3055, 43 U.S.C. § 422a *et seq.*)

EXPLANATORY NOTE

**Reference in the Text.** The Agricultural Act of 1949 does not appear herein.

TITLE IV—VALIDATION OF POWER CONTRACTS

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

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

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

October 27, 1986

VALIDATION OF POWER CONTRACTS

3519

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

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

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

"(C) The contract is an amendatory, supplemental and replacement contract between the United States and: (I) the Quincy-Columbia Basin Irrigation District (Contract No. 14-06100-6418); (ii) the East Columbia Basin Irrigation District (Contract No. 14-06-100-6419); or, (iii) the South Columbia Basin Irrigation District (Contract No. 14-06-100-6420). This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress."

EXPLANATORY NOTES

**Not Codified.** Titles I and II of this Act are not codified in the U.S. Code.

**References in the Text.** Extracts from the Federal Water Power Act (Act of June 10, 1920, 41 Stat. 1063; 16 U.S.C. § 791a et seq., and Acts amendatory thereof and supplementary thereto) appear in Volume I at pages 262 and 527. Amendments and annotations of appear at pages S56-S64 and in Supplement II at page S813.

**Legislative History.** H.R. 3113, Public Law 99-546 in the 99<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Repts. No. 99-257 and No. 99-991 (Comm. of Conference). Passed the House September 9, 1985. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 99-265; Passed Senate, amended July 16, 1986. House agreed to conference report Oct. 14, 1986. Senate agreed to conference report Oct. 15, 1986.

**KLAMATH RIVER BASIN RESTORATION PROGRAM ACT**

An Act to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes. (Act of October 27, 1986, Public Law 99-552, 100 Stat. 3080)

**Section 1. [Findings.]**—The Congress finds that—(1) the Klamath and Trinity Rivers have been placed under the California and National Wild and Scenic Rivers Systems to protect their outstanding anadromous fishery values;

(2) the Klamath and Trinity Rivers provide fishery resources necessary for Indian subsistence and ceremonial purposes, ocean commercial harvest, recreational fishing, and the economic health of many local communities;

(3) floods, the construction and operation of dams, diversions and hydroelectric projects, past mining, timber harvest practices, and road building have all contributed to sedimentation, reduced flows, and degraded water quality which has significantly reduced the anadromous fish habitat in the Klamath-Trinity River System;

(4) overlapping Federal, State, and local jurisdictions, inadequate enforcement of fishery harvest regulations, and ineffective fishery management have historically hampered fishery conservation efforts and prevented the Federal Government and the State of California from fulfilling their responsibilities to protect the rivers' anadromous fishery values;

(5) the Klamath-Trinity fall chinook salmon populations have declined by 80 percent from historic levels and steelhead trout have also undergone significant reductions;

(6) Klamath River Basin Fisheries Resource Plan has been developed by the Secretary acting through the Bureau of Indian Affairs;

(7) the Klamath Salmon Management Group, a group of agencies with fishery management responsibility, has established, in cooperation with the users of the Klamath-Trinity River Basin fishery resources, a sound framework for the future coordination of fishery harvest management;

(8) a new Klamath-Trinity River Basin Management authority, composed of the Klamath Salmon Management Group and representatives of users of the fishery resources of the Klamath-Trinity River Basin, is needed to ensure more effective long-term coordination of the Klamath-Trinity River fisheries under sound conservation and management principles that ensure adequate spawning escapement; and

(9) the Secretary has the authority to implement a restoration program only in the Trinity River Basin and needs additional authority to implement a restoration program in cooperation with State and local governments to restore anadromous fish populations to optimum levels in both the Klamath and Trinity River Basins. (100 Stat. 3080, 16 U.S.C. § 460ss.)

October 27, 1986

KLAMATH RIVER BASIN RESTORATION PROGRAM ACT 3521

**Sec. 2. [Klamath River Basin Conservation Area, Fishery Resources Restoration Program.]—(a) [Establishment of Klamath River Basin Conservation Area.]—**The Secretary shall designate the anadromous fish habitats and resources of the Klamath River basin as the Klamath River Basin Conservation Area (hereafter in this Act referred to as the "Area").

**(b) [Klamath River Basin Conservation Area Restoration Program.]—**

**(1) [Establishment.]—**The Secretary shall, in consultation with the task force established under section 4, formulate, establish, and implement a 20-year program to restore the anadromous fish populations of the Area to optimum levels and to maintain such levels. The program shall be based on the Klamath River Basin Fisheries Resource Plan referred to in section 1(6) and shall be known as the Klamath River Basin Conservation Area Restoration Program.

**(2) [Program activities.]—**In carrying out the objectives of the program, the Secretary, in cooperation with the task force established under section 4, shall—

(A) monitor and coordinate research evaluating the Area anadromous fish populations and administer and evaluate the success of activities described in subparagraph (B); and

(B) take such actions as are necessary to—

(i) improve and restore Area habitats, and to promote access to blocked Area habitats, to support increased run sizes;

(ii) rehabilitate problem watersheds in the Area to reduce negative impacts on fish and fish habitats;

(iii) improve existing Area hatcheries and rearing ponds to assist in rebuilding the natural populations;

(iv) implement an intensive, short-term stocking program to rebuild run sizes while maintaining the genetic integrity and diversity of Area subbasin stocks; and

(v) improve upstream and downstream migration by removal of obstacles to fish passage and the provision of facilities for avoiding obstacles.

**(3) [Restoration work.]—**To the extent practicable, any restoration work performed under paragraph (2)(B) shall be performed by unemployed—

(A) commercial fishermen;

(B) Indians; and

(C) other persons whose livelihood depends upon Area fishery resources.

**(4) [Memorandum of agreement.]—**In order to facilitate the implementation of any activity described in paragraph (2) over which the Secretary does not have jurisdiction, the Secretary shall enter into a memorandum of agreement with the Federal, State, and local agencies having jurisdiction over such activities, and the Area Indian tribes. The memorandum of agreement shall specify the program activities for which the respective

October 27, 1986

3522 KLAMATH RIVER BASIN RESTORATION PROGRAM ACT

signatories to the agreement are responsible and shall contain such provisions as are necessary to ensure the coordinated implementation of the program. (100 Stat. 3081, 16 U.S.C. § 460ss-1.)

**Sec. 3. [Klamath Fishery Management Council.]—**

**(a) [Establishment.]—**There is established a Klamath Fishery Management Council (hereafter in this Act referred to as the "Council").

**(b) [Functions.]—**

(1) The Council shall—

(A) establish a comprehensive long-term plan and policy, that must be consistent with the goals of the program, for the management of the in-river and ocean harvesting that affects or may affect Klamath and Trinity River basin anadromous fish populations;

(B) make recommendations, that must be consistent with the plan and policy established under subparagraph (A) and with the standards in paragraph (2)—

(i) to the California Fish and Game Commission regarding in-river and offshore recreational harvesting regulations,

(ii) to the Oregon Department of Fish and Wildlife regarding offshore recreational harvesting regulations,

(iii) to the Pacific Fishery Management Council regarding ocean harvesting regulations,

(iv) to the Bureau of Indian Affairs regarding regulations for harvesting in the Area by non-Hoopa Indians, and

(v) to the Hoopa Valley Business Council regarding regulations for harvesting in the Area by members of the Hoopa Indian Tribe; and

(C) conduct public hearings on any regulation referred to in subparagraph (B) (i) through (v).

(2) Any recommendation made by the Council under paragraph (1)(B) regarding harvesting regulations shall—

(A) be based upon the best scientific information available;

(B) minimize costs where practicable, and avoid unnecessary duplication of regulations;

(C) take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and

(D) be designed to achieve an escapement that preserves and strengthens the viability of the Area's natural anadromous fish populations.

**(c) [Membership and appointment.]—**The Council is composed of 11 members as follows:

(1) A representative, who shall be appointed by the Governor of California, of each of the following:

(A) The commercial salmon fishing industry.

(B) The in-river sportfishing community.

(C) The offshore recreational fishing industry.

October 27, 1986

KLAMATH RIVER BASIN RESTORATION PROGRAM ACT 3523

(D) The California Department of Fish and Game.

(2) A representative of the Hoopa Indian Tribe who shall be appointed by Hoopa Valley Business Council.

(3) A representative, who shall be appointed by the Secretary, of each of the following:

(A) The non-Hoopa Indians residing in the Area.

(B) The Department of the Interior.

(4) A representative, who shall be appointed by the Secretary of Commerce, of each of the following—

(A) The National Marine Fisheries Service.

(B) The Pacific Fishery Management Council.

(5) A representative, who shall be appointed by the Governor of Oregon, of each of the following:

(A) The commercial salmon fishing industry.

(B) The Oregon Department of Fish and Wildlife.

**(d) [Consultation requirement.]**—The appointments required under subsection (c) shall be made in consultation with the appropriate users of Area anadromous fish resources.

**(e) [Qualifications.]**—Council members shall be individuals who are knowledgeable and experienced in the management and conservation, or the recreational or commercial harvest, of the anadromous fish resources in Northern California.

**(f) [Terms.]—(1) [In general.]**—The term of a member is 4 years.

**(2) [Service.]**—Members of the Council serve at the pleasure of the appointing authority.

**(3) [Vacancies.]**—Any vacancy on the Council shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

**(g) [Transaction of business.]—(1) [Decisions of Council.]**—All decisions of the Council must be by unanimous vote of all of the members.

**(2) [Chairman.]**—The Council shall elect a Chairman from among its members.

**(3) [Meetings.]**—The Council shall meet at the call of the Chairman or upon the request of a majority of its members.

**(h) [Staff and administration.]—(1) [Administrative support.]**—The Secretary and the Director of the California Department of Fish and Game shall provide the Council with such administrative and technical support services as are necessary for the effective functioning of the Council.

October 27, 1986

3524 KLAMATH RIVER BASIN RESTORATION PROGRAM ACT

**(2) [Information.]**—The Secretary and the Director of the California Department of Fish and Game shall furnish the Council with relevant information concerning the Area.

**(3) [Organization.]**—The Council shall determine its organization, and prescribe the practices and procedures for carrying out its functions under subsection (b).

**(i) [Federal or state employees.]**—Any Council member who is an officer or employee of the United States or the State of California at the time of appointment to the Council shall cease to be a Council member within 14 days after the date on which he ceases to be so employed.

**(j) [Expenses.]—(1) [Travel expenses.]**—While away from their homes or regular places of business in the performance of services for the Council, Council members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed travel expenses under section 5703 of title 5 of the United States Code.

**(2) [Limitation on spending authority.]**—No money authorized to be appropriated under section 6 may be used to reimburse any agency or governmental unit (whose employees are Council members) for time spent by any such employee performing Council duties. (100 Stat. 3082, 16 U.S.C. § 460ss-2.)

**Sec. 4. [Klamath River Basin Fisheries Task Force.]**—

**(a) [Establishment.]**—There is established a Klamath River Basin Fisheries Task Force (hereafter in this Act referred to as the "Task Force").

**(b) [Functions.]—[The Task Force]**—(1) shall assist the Secretary in the formulation, coordination, and implementation of the program;

(2) shall assist, and coordinate its activities with, Federal, State, and local governmental or private anadromous fish restoration projects within the Area;

(3) shall conduct any other activity that is necessary to accomplish the objectives of the program; and

(4) may act as an advisor to the Council.

**(c) [Membership and appointment.]**—The Task Force is composed of 12 members as follows:

(1) A representative, who shall be appointed by the Governor of California, of each of the following:

(A) The commercial salmon fishing industry.

(B) The in-river sport fishing community.

(C) The California Department of Fish and Game.

(2) A representative of the Hoopa Indian Tribe who shall be appointed by the Hoopa Valley Business Council.

(3) A representative of the Department of the Interior who shall be appointed by the Secretary.

October 27, 1986

KLAMATH RIVER BASIN RESTORATION PROGRAM ACT 3525

(4) A representative of the National Marine Fisheries Service who shall be appointed by the Secretary of Commerce.

(5) A representative of the Department of Agriculture who shall be appointed by the Secretary of Agriculture.

(6) A representative of the Oregon Department of Fish and Wildlife who shall be appointed by the Governor of Oregon.

(7) One individual who shall be appointed by the Board of Supervisors of Del Norte County, California.

(8) One individual who shall be appointed by the Board of Supervisors of Siskiyou County, California.

(9) One individual who shall be appointed by the Board of Supervisors of Humboldt County, California.

(10) One individual who shall be appointed by the Board of Supervisors of Trinity County, California.

**(d) [Council membership not a bar to Task Force appointment.]**—An individual who is a member of the Council is not ineligible for appointment as a member of the Task Force.

**(e) [Terms.]—(1) [In general.]**—The term of a member of the Task Force is 4 years.

**(2) [Service.]**—Members of the Task Force serve at the pleasure of the appointing authorities.

**(3) [Vacancies.]**—Any vacancy on the Task Force shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

**(f) [Transaction of business.]—(1) [Decisions of Task Force.]**—All decisions of the Task Force must be by unanimous vote of all the members.

**(2) [Chairman.]**—The members of the Task Force shall select a Chairman from among its members.

**(3) [Meetings.]**—The Task Force shall meet at the call of the Chairman or upon the request of a majority of its members.

**(g) [Staff and administration.]—(1) [Administrative support.]**—The Secretary and the Director of the California Department of Fish and Game shall provide the Task Force with the administrative and technical support services necessary for the effective functioning of the Task Force.

**(2) [Information.]**—The Secretary and the Director of the California Department of Fish and Game shall furnish the members of the Task Force with relevant information concerning the Area.

**(3) [Organization.]**—The Task Force shall determine its organization, and prescribe the practices and procedures for carrying out its functions under subsection (b).

October 27, 1986

3526 KLAMATH RIVER BASIN RESTORATION PROGRAM ACT

**(h) [Members who are Federal or state employees.]**—Any Task Force member who is an officer or employee of the United States or the State of California at the time of appointment to the Task Force shall cease to be a member of the Task Force within 14 days of the date on which he ceases to be so employed.

**(i) [Limitation on spending authority.]**—No money authorized to be appropriated under section 6 may be used to reimburse any Task Force member or agency or governmental unit (whose employees are Task Force members) for time spent by any such employee performing Task Force duties. (100 Stat. 3084, 16 U.S.C. § 460ss-3.)

**Sec. 5. [Enforcement.]—(a) [Memorandum of agreement.]**—In order to strengthen and facilitate the enforcement of Area fishery harvesting regulations, the Secretary shall enter into a memorandum of agreement with the California Department of Fish and Game. Such agreement shall specify the enforcement activities within the Area for which the respective agencies of the Department of the Interior and the California Department of Fish and Game are responsible and shall contain such provisions as are necessary to ensure the coordinated implementation of Federal and State enforcement activities. (100 Stat. 3085, 16 U.S.C. § 460ss-4.)

**Sec. 6. [Appropriations.]—(a) [Authorization.]**—There are authorized to be appropriated to the Department of the Interior during the period beginning October 1, 1986, and ending on September 30, 2006, \$21,000,000 for the design, construction, operation, and maintenance of the program. Monies appropriated under this subsection shall remain available until expended or October 1, 2006, whichever first occurs.

**(b) [Cost-sharing.]**—(1) 50 percent of the cost of the development and implementation of the program must be provided by one or more non-Federal sources on a basis considered by the Secretary to be timely and appropriate. For purposes of this subsection, the term "non-Federal source" includes a State or local government, any private entity, and any individual.

(2) In addition to cash outlays, the Secretary shall consider as financial contributions by a non-Federal source the value of in kind contributions and real and personal property provided by the source for purposes of implementing the program. Valuations made by the Secretary under this paragraph are final and not subject to judicial review.

(3) For purposes of paragraph (2), in kind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies.

(4) The Secretary shall by regulation establish—

(A) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as in kind contributions; and

October 27, 1986

KLAMATH RIVER BASIN RESTORATION PROGRAM ACT 3527

(B) the standards under which the Secretary will determine the value of in kind contributions and real and personal property for purposes of paragraph (2).

(5) The Secretary may not consider the expenditure, either directly or indirectly, with respect to the program of Federal moneys received by a State or local government to be a financial contribution by a non-Federal source to carry out the program. (100 Stat. 3085, 16 U.S.C. § 460ss-5.)

**Sec. 7. [Definitions.]**—As used in this Act—(1) The term "program" means the Klamath River Basin Conservation Area Restoration Program established under section 2(b).

(2) The term "Secretary" means the Secretary of the Interior. (100 Stat. 3086, 16 U.S.C. § 460ss-6.)

EXPLANATORY NOTE

**Legislative History.** H.R. 4712, Public Law 99-552 in the 98<sup>th</sup> Congress. Reported in the House from Merchant Marine and Fisheries; H.R. Rept. No. 99-894, Pt. 1. Passed the House September 30, 1986. Passed the Senate October 3, 1986.

## LOWER COLORADO WATER SUPPLY ACT

An Act entitled the "Lower Colorado Water Supply Act" [to authorize the Secretary of the Interior to construct operate, and maintain the Lower Colorado Water Supply Project, California, in order to supply water for domestic, municipal industrial, and recreational purposes only with certain conditions. (Act of November 14, 1986, Public Law 99-655, 100 Stat. 3665)]

**Section 1. [Authorization-Exchange contracts-Congressional committee oversight.]**—(a) The Secretary of the Interior is authorized to construct, operate, and maintain the Lower Colorado Water Supply Project, California, in order to supply water for domestic, municipal, industrial, and recreational purposes only: *Provided*, That, the Secretary is hereby authorized, in his discretion, to contract with non-Federal interests for the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe. Such project shall be constructed in stages as increases in demand warrant and substantially in accordance with the plans set forth in the document entitled "Lower Colorado Water Supply Study, California" (December 1985): *Provided*, That the Secretary is prohibited from constructing facilities with a total capacity in excess of ten thousand acre-feet per annum under authority of this Act.

(b)(1) The Secretary is further authorized to enter into exchange contracts and take such actions as the Secretary deems appropriate to facilitate a water exchange agreement between non-Federal interests and those interests designated in section 2(b) of this Act in which such non-Federal interests agree to exchange a portion of their rights to divert water from the Colorado River for an equivalent quantity and quality of groundwater to be withdrawn from a well field located in the Sand Hills area, Imperial County, California.

(2) The Secretary is prohibited from executing any contracts under the authority of subsection (b)(1) of this section until such contracts have been submitted to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate and ninety calendar days have elapsed. (100 Stat. 3665)

**Sec. 2. [Repayment of costs.]**—(a) The Secretary is prohibited from obligating or expending any of the funds authorized to be appropriated by section 3 of this Act until—

(1) a study has been completed, and submitted to the appropriate committees of the Congress, allocating among the Federal and non-Federal beneficiaries the capital costs and the costs of operating, maintaining, and replacing the project authorized by section 1 of this Act;

(2) the Secretary has entered into a contract or contracts with non-Federal interests for repayment of the capital costs, plus interest, as determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the contract is executed, on the basis of the average market yields on outstanding

November 14, 1986

LOWER COLORADO WATER SUPPLY ACT

3529

marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 per centum, allocated to non-Federal interests for domestic, municipal, industrial, and recreational purposes as identified in the cost allocation study prepared under subsection (a)(1): *Provided*, That the terms and provisions of such contracts and repayment shall be governed by the provisions of the Water Supply Act of 1958 (43 U.S.C. § 390b note.) which were in effect on January 1, 1986;

(3) the Secretary has entered into a contract or contracts with non-Federal interests for payment of 100 per centum of the costs allocated to such non-Federal interests for the operation, maintenance, and replacement of the project on a current basis; and

(4) the Secretary has transmitted to Congress the final planning report/environmental assessment on the Lower Colorado Water Supply Project.

EXPLANATORY NOTE

**Reference in the Text.** The Water Supply Act of 1958, the Act of July 3, 1958, (Title III, Public Law 85-500, 72 Stat. 297) referenced above appears in Volume II at pages 1426-

1428. Amendments and annotations appear in Supplement I at page S284, Volume II at page 1426, and in Supplement II at page S885.

(b) Any contracts executed by the Secretary to fulfill the requirements of subsections (a)(2) and (a)(3) of this section must be with persons, or Federal or non-Federal governmental entities whose lands or interests in lands are located adjacent to the Colorado River in the State of California who do not hold rights to Colorado River water or whose rights are insufficient to meet their present or anticipated future needs, as determined by the Secretary. Such persons, or Federal or non-Federal governmental entities shall include the city of Needles, the town of Winterhaven, and other domestic, municipal, industrial, and recreational water users along the Colorado River in the State of California. (100 Stat. 3665)

**Sec. 3. [Authorization of appropriations.]**—There are authorized to be appropriated for the construction through September 30, 1993, of the Lower Colorado Water Supply Project the sum of \$1,800,000 plus or minus such amounts, if any, as may be justified by reason of ordinary cost indices applicable to the types of construction involved therein and in addition thereto such sums as may be required for operation, maintenance and replacement of that portion of the project used to supply domestic, municipal, industrial, or recreational water supplies for lands managed by the Federal Government. No funds are authorized to be appropriated for payment of the operation, maintenance, or

November 14, 1986

3530

LOWER COLORADO WATER SUPPLY ACT

replacement costs allocated to non-Federal beneficiaries as determined by the study undertaken under authority of section 2(a)(1). (100 Stat. 3666)

**Sec. 4. [Contribution of construction costs.]**—The Secretary is authorized to accept monetary contributions from the city of Needles and other incorporated cities for the construction of project features of the Lower Colorado Water Supply Project allocated to the provision of water supplies to the city of Needles and other incorporated cities: *Provided*, That, such contributions shall be credited toward the reimbursable costs to be repaid by the city of Needles and other incorporated cities pursuant to the contracts entered into pursuant to section 2 of this Act. Such contributions by the city of Needles and other incorporated cities shall be contributed during the construction of the appropriate project features and shall constitute 20 percent of the costs of such project features allocated to the city of Needles and other incorporated cities for repayment. (100 Stat. 3666)

**Sec. 5. [Existing law unaffected.]**—Nothing contained in this Act shall be construed to alter, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), 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), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. § 618a), or the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. § 1501). Nor shall any provision of this Act—

(a) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or streams or over any groundwater resources, or

(b) 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. (100 Stat. 3667)

EXPLANATORY NOTES

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

**References in the Text.** The Colorado River Compact (45 Stat. 1057) referenced above appears in Volume I at page 441.

The Water Treaty of 1944 with the United Mexican States (Treaty Series 994, 59 Stat. 1219) referenced above appears in Volume II at page 750.

The decree *Arizona v. California* (376 U.S. 340) does not appear herein.

The Boulder Canyon Project Act, of December 21, 1928 (ch. 42, 45 Stat. 1057) referenced above appears in Volume I at page

414. Amendments and annotations of the 1928 Act appear in Supplement II at page S839.

The Boulder Canyon Project Adjustment Act, Act of July 19, 1940 (ch. 643, 54 Stat. 774) referenced above appears in Volume I at page 697. Amendments and annotations of the 1940 Act appear in Supplement II at page S857.

The Colorado River Basin Project Act, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 885) referenced above appears in Volume IV at page 2395. Amendments and annotations of the 1968 Act appear in Supplement II at page S995.

**Legislative History.** H.R. 5028, Public Law

November 14, 1986

LOWER COLORADO WATER SUPPLY ACT 3531

99-655 in the 99<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 99-650. Passed House June 24, 1986. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 99-496. Passed Senate, amended Oct. 9, 1986. House disagreed to Senate amendment October 15, 1986. Senate receded from its amendment October 18, 1986.

**WATER RESOURCES DEVELOPMENT ACT OF 1986**

**[Extracts from]** An Act To provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure. (Act of November 17, 1986, Public Law 99-662, 100 Stat. 4082; 33 U.S.C. § 2201 note.)

**Section 1. [Short title and table of contents.]-(a) [Short title.]**— This Act may be cited as the "Water Resource Development Act of 1986".

**(b) [Table of contents.]**—

- Title I-Cost Sharing
- Title II-Harbor Development
- Title III-Inland Waterway Transportation System
- Title IV-Flood Control
- Title V-Shoreline Protection
- Title VI-Water Resources Conservation and Development
- Title VII-Water Resources Studies
- Title VIII-Project Modifications
- Title IX-General Provisions
- Title X-Project Deauthorizations
- Title XI-Miscellaneous Programs and Projects
- Title XII-Dam Safety
- Title XIII-Namings
- Title XIV-Revenue Provisions

**Sec. 2. [Definition of Secretary.]**—For purposes of this Act, the term "Secretary" means the Secretary of the Army. (100 Stat. 4082; 33 U.S.C. § 2201.)

TITLE I-COST SHARING

\* \* \* \* \*

**Sec. 103. [Flood control and other purposes.]-(a) [Flood control.]**—

**(1) [General rule.]**—The non-Federal interests for a project with costs assigned to flood control (other than a nonstructural project) shall—

- (A) pay 5 percent of the cost of the project assigned to flood control during construction of the project;
- (B) provide all lands, easements, rights-of-way, and dredged material disposal areas required only for flood control and perform all related necessary relocations; and
- (C) provide that portion of the joint costs of lands, easements, rights-of-way, dredged material disposal areas, and relocations which is assigned to flood control.

**(2) [25 percent minimum contribution.]**—If the value of the contributions required under paragraph (1) of this subsection is less than 25 percent of the cost of the project assigned to flood control, the non-Federal interest shall pay

November 17, 1986

WATER RESOURCES DEVELOPMENT ACT OF 1986 3533

during construction of the project such additional amounts as are necessary so that the total contribution of the non-Federal interests under this subsection is equal to 25 percent of the cost of the project assigned to flood control.

**(3) [50 percent maximum.]**—The non-Federal share under paragraph (1) shall not exceed 50 percent of the cost of the project assigned to flood control. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

**(4) [Deferred payment of amount exceeding 30 percent.]**—If the total amount of the contribution required under paragraph (1) of this subsection exceeds 30 percent of the cost of the project assigned to flood control, the non-Federal interests may pay the amount of the excess to the Secretary over a 15-year period (or such shorter period as may be agreed to by the Secretary and the non-Federal interests) beginning on the date construction of the project or separable element is completed, at an interest rate determined pursuant to section 106. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

**(b) [Nonstructural flood control projects.]**—The non-Federal share of the cost of nonstructural flood control measures shall be 25 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction of the project.

**(c) [Other purposes.]**—The non-Federal share of the cost assigned to other project purposes shall be as follows:

(1) hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: *Provided*, That after the date of enactment of this Act, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 302 of the Department of Energy Organization Act (Public Law 95-91; 42 U.S.C. § 7152.) concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power expected to be generated and not required in the operation of the project under the applicable Federal power marketing law, so that, 100 percent of operation, maintenance and replacement costs, 100 percent of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law), and any other costs assigned in accordance with law for return from power revenues can be returned within the period set for the return of such costs by or pursuant to such applicable Federal power marketing law;

(2) municipal and industrial water supply: 100 percent;

November 17, 1986

3534 WATER RESOURCES DEVELOPMENT ACT OF 1986

- (3) agricultural water supply: 35 percent;
- (4) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel project, 50 percent of joint and separable costs allocated to recreational navigation;
- (5) hurricane and storm damage reduction: 35 percent; and
- (6) aquatic plant control: 50 percent of control operations.

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Department of Energy Organization Act, Act of August 4, 1977 (Public Law 95-91, 91 Stat. 565) referenced above appear in Volume IV at page 3048. Amendments and annotations of the 1977 Act appear in Supplement II at page S1063.

**(d) [Certain other costs assigned to project purposes.]**—Costs of constructing projects or measures for beach erosion control and water quality enhancement shall be assigned to appropriate project purposes listed in subsections (a), (b), and (c) and shall be shared in the same percentage as the purposes to which the costs are assigned, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests and all costs assigned to the protection of federally owned shores shall be borne by the United States.

**(e) [Applicability.]—(1) [In general.]**—This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before the date of enactment of this Act), or separable element thereof, on which physical construction is initiated after April 30, 1986, as determined by the Secretary, except as provided in paragraph (2).

**(2) [Exceptions.]**—This section shall not apply to the Yazoo Basin, Mississippi, Demonstration Erosion Control Program, authorized by Public Law 98-8 (23 U.S.C. § 104 note.), or to the Harlan, Kentucky, or Barbourvie, Kentucky, elements of the project authorized by section 202 of Public Law 96-367 (94 Stat. 1339).

EXPLANATORY NOTE

**References in the Text.** Public Law 98-8 (Public Law 96-367, 94 Stat. 1331) referenced above does not appear herein. Extracts from the Act of October 1, 1980 above appear in Volume IV at page 3214.

**(f) [Definition of separable element.]**—For purposes of this Act, the term "separable element" means a portion of a project—

November 17, 1986

WATER RESOURCES DEVELOPMENT ACT OF 1986 3535

- (1) which is physically separable from other portions of the project; and
- (2) which—
  - (A) achieves hydrologic effects, or
  - (B) produces physical or economic benefits, which are separately identifiable from those produced by other portions of the project.

**(g) [Deferral of payment.]—**(1) With respect to the projects listed in paragraph (2), no amount of the non-Federal share required under this section shall be required to be paid during the three-year period beginning on the date of enactment of this Act.

- (2) The projects referred to in paragraph (1) are the following:
  - (A) Boeuf and Tensas Rivers, Tensas Basin, Louisiana and Arkansas, authorized by the Flood Control Act of 1946 (33 U.S.C. § 701b-8,721o.);
  - (B) Eight Mile Creek, Arkansas, authorized by Public Law 99-88 (99 Stat. 293); and
  - (C) Rocky Bayou Area, Yazoo Backwater Area, Yazoo Basin, Mississippi, authorized by the Flood Control Act approved August 18, 1941 (33 U.S.C. § 702a-702m.).

EXPLANATORY NOTE

<b>References in the Text.</b> Extracts from the Flood Control Act of 1946 referenced above appear in Volume II at page 832.	appear herein.
Public Law 99-88 referenced above does not	The Flood Control Act approved August 18, 1941, referenced above does not appear herein.

**(h) [Assigned joint and separable costs.]—**The share of the costs specified under this section for each project purpose shall apply to the joint and separable costs of construction of each project assigned to that purpose, except as otherwise specified in this Act.

**(i) [Lands, easements, rights-of-way, dredged material disposal areas, and relocations.]—**The non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included in the non-Federal share of the project specified in this section.

**(j) [Agreement.]—(1) [Requirement for agreement.]—**Any project to which this section applies (other than a project for hydroelectric power) shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section, and to hold and save the United States free from damages due to the construction or operation and

November 17, 1986

3536 WATER RESOURCES DEVELOPMENT ACT OF 1986

maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

**(2) [Elements of agreement.]**—The agreement required pursuant to paragraph (1) shall be in accordance with the requirements of section 221 of the Flood Control Act of 1970 (84 Stat. 1818; 42 U.S.C. § 19624-5b.) and shall provide for the rights and duties of the United States and the non-Federal interest with respect to the construction, operation, and maintenance of the project, including, but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary—

(A) shall terminate or suspend work on the project unless the Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and

(B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Flood Control Act of 1970, the Act of December 31, 1970 (Public Law 91-611, 84 Stat. 1818) referenced above appear in Volume IV at page 2615. Amendments of the Act appear at pages 2646 and 2837.

**(k) [Payment options.]**—Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 106 over a period of not more than thirty years from the date of completion of the project or separable element. Repayment contracts shall provide for recalculation of the interest rate at five-year intervals.

**(l) [Delay of initial payment.]**—At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 101 for up to one year after the date when construction is begun on the project for which such contribution is to be made. Any such delay in initial payment shall be subject to interest charges for up to six months at a rate determined pursuant to section 106.

**(m) [Ability to pay.]**—Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary. (100 Stat. 4084)

November 17, 1986

WATER RESOURCES DEVELOPMENT ACT OF 1986 3537

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**Sec. 715. [Columbia River/Arkansas River Basin transfers.]**—(a) No Federal agency shall study or participate in the study of any regional or river basin plan or any plan for any Federal water and related land resource project which has as its objective the transfer of water from the Columbia River Basin to any other region or any other major river basin of the United States, unless such study is approved by the Governors of all affected States.

(b) For a period of 5 years after the date of enactment of this Act, no Federal agency shall study or participate in the study of any regional or river basin plan or any plan for any Federal water and related land resource project which has as its objective the transfer of water from the Arkansas River Basin to any other region or any other major river basin of the United States, unless such study is approved by the Governors of all affected States. (100 Stat. 4161; 33 U.S.C. § 2265.)

\* \* \* \* \*

**Sec. 931. [Interim use of water supply for irrigation.]**—Section 8 of the Act of December 22, 1944 (58 Stat. 891; 43 U.S.C. § 390), is amended by adding at the end the following: "In the case of any reservoir project constructed and operated by the Corps of Engineers, the Secretary of the Army is authorized to allocate water which was allocated in the project purpose for municipal and industrial water supply and which is not under contract for delivery, for such periods as he may deem reasonable, for the interim use for irrigation purposes of such storage until such storage is required for municipal and industrial water supply. No contracts for the interim use of such storage shall be entered into which would significantly affect then-existing uses of such storage." (100 Stat. 4196)

EXPLANATORY NOTE

**Reference in the Text.** Section 8 of the Act of December 22, 1944 (58 Stat. 891; 43 U.S.C. § 390, commonly known as the "Flood Control Act of 1944") provides in part that, ". . . whenever the Secretary of War [now the Secretary of Defense through the Army Corps of Engineers] determines, upon recommendation by the Secretary of the Interior that any dam and reservoir project operated under the direction of the Secretary of War may be utilized for irrigation purposes, the Secretary of the Interior is authorized to

construct, operate, and maintain, under the provisions of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), such additional works in connection therewith as he may deem necessary for irrigation purposes."

Section 8 of the 1944 Act appears in Volume I at page 805. Amendments and annotations of the 1944 Act appear in Supplement I at page S147 and Supplement II at page S861.

November 17, 1986

3538 WATER RESOURCES DEVELOPMENT ACT OF 1986

**Sec. 932. [Water Supply Act amendments.]**—(a) Section 301(b) of the Water Supply Act of 1958 (72 Stat. 319; 43 U.S.C. § 390b(b)), is amended as follows:

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

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

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

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

**(b) [Existing contracts.]**—Nothing in this section shall be deemed to amend or require amendment of any valid contract entered into pursuant to the Water Supply Act of 1958, or Federal reclamation law and approved by the Secretary of the Army or the Secretary of the Interior prior to the date of enactment of this Act. (100 Stat. 4197; 43 U.S.C. § 390b note.)

EXPLANATORY NOTE

**Reference in the Text.** Section 301(b) of the Water Supply Act of 1958 (72 Stat. 319; 43 U.S.C. § 390b(b)) provides in part, ". . . that storage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps of Engineers or the Bureau of

Reclamation to impound water for present or anticipate future demand or need for municipal or industrial water . . ." Section 301(b) of the 1958 Act appears in Volume II at page 1426. Amendments and annotations of the 1958 Act appear in Supplement I at page S284 and Supplement II at page S885.

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November 17, 1986

WATER RESOURCES DEVELOPMENT ACT OF 1986 3539

**Sec. 1120. [Hilltop and Gray Goose Irrigation Districts, South Dakota.]**—(a) The existing irrigation projects known as the Hilltop Irrigation District, Brule County, South Dakota, and the Gray Goose Irrigation District, Hughes County, South Dakota, are authorized as units of the Pick-Sloan Missouri Basin Program. As so authorized, the Hilltop Unit and the Gray Goose 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, and subject to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto).

(b) Pick-Sloan Missouri Basin Program power shall be made available as soon as practicable for the Hilltop Unit and the Gray Goose Unit on the same basis as for other units of the Pick-Sloan Missouri Basin Program. The suballocated costs of the Pick-Sloan Missouri Basin Program assigned to the Hilltop Unit and the Gray Goose Unit shall be reimbursed by the water users as determined by the Secretary of the Interior in accordance with Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto). (100 Stat. 4238)

EXPLANATORY NOTE

**Reference in the Text.** The "Pick-Sloan Missouri Basin Program" referenced above and in following sections of this Act is the designation given by the Act of December 24, 1970 (Public Law 91-576, 84 Stat. 1541) to the comprehensive Missouri River Basin development program authorized by the Flood Control Act of December 22, 1944 (ch. 665, 58 Stat. 887. Extracts from the 1944 Act appear in Volume II at page 796. The 1970 Act appears in Volume IV at page 2601.

\* \* \* \* \*

**Sec. 1121. [Ogallala Aquifer.]**—(a) The Congress finds that—

(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the 8 States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming;

(2) the High Plains region has become an important source of agricultural commodities and livestock for domestic and international markets, providing 15 percent of the Nation's supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 percent of the value of livestock raised in the United States; and

(3) annual precipitation in the High Plains region ranges from 15 to 22 inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

November 17, 1986

3540

OGALLALA AQUIFER RESEARCH

(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

- (1) plan for the development of an adequate supply of water in the region;
- (2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;
- (3) examine alternatives for the development of an adequate supply of water for the region; and
- (4) develop water-conservation management practices which are efficient for agricultural producers in the region.

(c) The Water Resources Research Act (Public Law 98-242) is amended by adding at the end thereof the following new title:

EXPLANATORY NOTE

**Reference in the Text.** The Water Resources Research Act, Act of March 22, 1984 (Public Law 98-242, 98 Stat. 97, as amended) appears in Volume V at page 3381.

"TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

"Sec. 301. (a) There is hereby established the High Plains Study Council composed of—

"(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the 'High Plains region'), or a designee of the Governor;

"(2) a representative of the Department of Agriculture; and

"(3) a representative of the Secretary.

"(b) The Council established pursuant to this section shall—

"(1) review research work being performed by each State committee established under section 302 of this Act; and

"(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

"Sec. 302. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the 'State committee'). Each State committee shall be composed of no more than seven members, including—

"(1) a representative of the United States Department of Agriculture;

"(2) a representative of the Secretary; and

"(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the

November 17, 1986

OGALLA AQUIFER RESEARCH

3541

agricultural community, the State Water Research Institute (as designated under this Act), and others with a special interest or expertise in water resources.

"(b) The State committee established pursuant to subsection (a) of this section shall—

"(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

"(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

"(3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

"(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section. (100 Stat. 4239; 42 U.S.C. § 10301 note.)

"Sec. 303. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

"(1) water-use efficiency;

"(2) cultural methods;

"(3) irrigation technologies;

"(4) water-efficient crops; and

"(5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

"Sec. 304. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

"(1) precipitation management;

"(2) weather modification;

"(3) aquifer recharge opportunities;

"(4) saline water uses;

"(5) desalinization technologies;

"(6) salt tolerant crops; and

"(7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education

November 17, 1986

3542

OGALLALA AQUIFER RESEARCH

shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit. (100 Stat. 4240)

" Sec. 305. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

- "(1) water-efficient irrigation technologies and practices;
- "(2) soil and water conservation management systems; and
- "(3) the growing and marketing of more water-efficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees. (42 U.S.C. § 10301 note.)

"Sec. 306. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report biennially to Congress. (109 Stat. 722)

EXPLANATORY NOTE

**1995 Amendments.** Section 1082 of the Federal Reports Elimination and Sunset Act of 1995 (Act of December 21, 1995, Public Law 104-66, 109 Stat. 707) amended sections 306 above and 308 below as follows: (1) in section 306, by striking "annually" and inserting "biennially"; and (2) in section 308, by striking "intervals of on year" and inserting "intervals of 2 years". Section 1082 of the 1995 Act appears in Volume V at page 4072.

"Sec. 307. The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

"Sec. 308. Not later than one year after the date of enactment of this title, and at intervals of 2 years thereafter, the Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title. (109 Stat. 722)

"Sec. 309. (a) For each of the fiscal years ending September 30, 1987, through September 30, 1991, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

- "(1) \$600,000 for the purposes of section 302;
- "(2) \$4,300,000 for the purposes of section 303;
- "(3) \$2,200,000 for the purposes of section 304;

November 17, 1986

WATER RESOURCES DEVELOPMENT ACT OF 1986 3543

"(4) \$5,300,000 for the purposes of section 305; and

"(5) \$600,000 for the purposes of section 306.

"(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States." (100 Stat. 4241; 42 U.S.C. § 10301 note.)

**Sec. 1122. [Pick-Sloan Program, North Dakota.]**—The Pick-Sloan Missouri Basin Program shall be prosecuted, as authorized and in accordance with applicable laws including the requirements for economic feasibility, to its ultimate development on an equitable basis as rapidly as may be practicable, within the limits of available funds and the cost recovery and repayment principles established by Senate Report Numbered 470 and House of Representatives Report Numbered 282, Eighty-ninth Congress, first session. Nothing in this section shall be deemed to amend or alter the cost recovery or repayment provisions for the Garrison Diversion Unit, North Dakota, as set forth in Public Law 99-294. (100 Stat. 4241; 42 U.S.C. § 10301 note.)

EXPLANATORY NOTE

**References in the Text.** S. Rept. 470 and H.R. Rept. 282 provide the legislative history for the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) authorizing the Secretary of the Interior to make certain provision in connection with the construction of the Garrison Diversion Unit of the Missouri River Basin project. The Act appears in Volume III at page 1840.

Public Law 99-294 (Act of May 12, 1986, 100 Stat. 418) was enacted to implement certain recommendations made pursuant to Public Law 98-360 (Act of July 16, 1984, 98 Stat. 403) relating to the Garrison Diversion Unit of the Pick-Sloan Missouri Basin Program. The 1984 and the 1986 Act both appear in Volume V at pages 3464 and 3399, respectively.

**Sec. 1123. [Federal townsites.]**—

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(7) The Administrator of the Western Area Power Administration is authorized to allocate power from the Pick-Sloan Missouri Basin Program (P-SMBP) to the municipal corporations of Riverdale, North Dakota, Pickstown, South Dakota, and Fort Peck, Montana, or to such other preference entity as the Administrator may designate to provide electrical service to said municipal corporations. Such allocations shall be in the amount required to meet the annual loads established prior to the date of enactment of this Act, and under terms and conditions for marketing firm power from the P-SMBP: *Except*, That upon request of a municipal corporation specified in this subsection, the Secretary shall continue to operate municipal or community owned facilities for a period not to exceed three years from the date of incorporation of such municipal corporation. (100 Stat. 4243)

November 17, 1986

3544 WATER RESOURCES DEVELOPMENT ACT OF 1986

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EXPLANATORY NOTE

**Legislative History.** H.R. 6 (H.R. 2494) (S. 1567), Public Law 99-662 in the 99<sup>th</sup> Congress. Reported in the House from Public Works and Transportation; H.R. Repts. No. 99-111 accompanying H.R. 2494, No. 99-251, Pt. 1 (Public Works and Transportation), Pt. 2 (Interior and Insular Affairs), Pt.3 (Ways and Means), Pt. 4 (Merchant Marine and Fisheries), and No. 99-1013 (Conference). S. Repts. No. 99-126 accompanying S. 1567 (Environment and Public Works) and No. 99-228 accompanying S. 1567 (Finance). Considered and passed House November 5, 6, 13, 1985. Considered and passed Senate, amended, in lieu of S. 1567 Mar. 26, 1986. House and Senate agreed to conference report October 17, 1986.

April 2, 1987

3545

**SURFACE TRANSPORTATION AND UNIFORM RELOCATION  
ASSISTANCE ACT OF 1987**

**[Extract from]** An Act to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes. (Act of April 2, 1987, Public Law 100-17, 101 Stat. 132)

**(a) [Short title.]**—This Act may be cited as the "Surface Transportation and Uniform Relocation Assistance Act of 1987".

\* \* \* \* \*

**TITLE IV—UNIFORM RELOCATION ACT AMENDMENTS OF 1987**

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Certification.
- Sec. 404. Declaration of findings and policy.
- Sec. 405. Moving and related expenses.
- Sec. 406. Replacement housing for homeowner.
- Sec. 407. Replacement housing for tenants and certain others.
- Sec. 408. Relocation planning, assistance coordination, and advisory services.
- Sec. 409. Housing replacement by Federal agency as last resort.
- Sec. 410. Assurances—Section 210.
- Sec. 411. Federal share of costs.
- Sec. 412. Duties of lead agency.
- Sec. 413. Payments under other laws.
- Sec. 414. Transfer of surplus property.
- Sec. 415. Repeals.
- Sec. 416. Uniform policy on real property acquisition practices.
- Sec. 417. Assurances—Section 305.
- Sec. 418. Effective date.

\* \* \* \* \*

**TITLE IV—UNIFORM RELOCATION ACT AMENDMENTS OF 1987**

**Sec. 401. [Short title.]**—This title may be cited as the "Uniform Relocation Act Amendments of 1987". (101 Stat. 246; 42 U.S.C. § 4601 note.)

**Sec. 402. [Definitions.]—(a) [Federal agency defined.]**— Section 101(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereinafter in this title referred to as the "Uniform Act") (42 U.S.C. § 4601(1)) is amended to read as follows:

April 2, 1987

3546

RELOCATION ACT AMENDMENTS

"(1) The term 'Federal agency' means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law."

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Uniform Relocation assistance and Real Property Acquisition Policies Act of 1970, hereinafter referred to as the "Uniform Act", Act of January 2, 1971 (Public Law 91-646, 84 Stat. 1894) referenced above and throughout this Act appear in Volume IV at page 2617. Amendments and annotations appear in Supplement II at page S998.

**(b) [State agency defined.]**—Section 101(3) of the Uniform Act (42 U.S.C. § 4601(3)) is amended to read as follows:

"(3) The term 'State agency' means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law."

**(c) [Interest reduction payments as Federal financial assistance.]**—Section 101(4) of the Uniform Act (42 U.S.C. § 4601(4)) is amended by inserting ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual," after "insurance".

**(d) [Displaced person defined.]**—Section 101(6) of the Uniform Act (42 U.S.C. § 4601(6).) is amended to read as follows:

"(6)(A) The term 'displaced person' means, except as provided in subparagraph (B)

"(i) any person who moves from real property, or moves his personal property from real property—

"(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

"(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in section 101(7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

April 2, 1987

RELOCATION ACT AMENDMENTS

3547

"(ii) solely for the purposes of sections 202 (a) and (b) and 205 of this title, any person who moves from real property, or moves his personal property from real property—

"(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

"(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

"(B) The term 'displaced person' does not include—

"(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;

"(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project."

**(e) [Comparable replacement dwelling, displacing agency, lead agency, and appraisal defined.]**—Section 101 of the Uniform Act (42 U.S.C. § 4601.) is amended by adding at the end thereof the following new paragraphs:

"(10) The term 'comparable replacement dwelling' means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (c) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

"(11) The term 'displacing agency' means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person. (101 Stat. 246)

"(12) The term 'lead agency' means the Department of Transportation.

"(13) The term 'appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information."

April 2, 1987

3548

RELOCATION ACT AMENDMENTS

**(f) [Conforming amendment.]**—Section 101(7)(D) of the Uniform Act (42 U.S.C. § 4601(7)(D)) is amended by striking out "(a)" after "202". (101 Stat. 246)

**Sec. 403. [Certification.]**—Title I of the Uniform Act is amended by adding at the end thereof the following new section:

"CERTIFICATION

"Sec. 103. (a) Notwithstanding sections 210 and 305 of this Act (42 U.S.C. § 4604), the head of a Federal agency may discharge any of his responsibilities under this Act by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this Act.

"(b)(1) The head of the lead agency shall issue regulations to carry out this section.

"(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.

"(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this Act.

"(c)(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

"(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.". (101 Stat. 248)

**Sec. 404. [Declaration of findings and policy.]**—Section 201 of the Uniform Act (42 U.S.C. § 4621) is amended to read as follows:

"DECLARATION OF FINDINGS AND POLICY

"Sec. 201. (a) The Congress finds and declares that—

"(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

April 2, 1987

RELOCATION ACT AMENDMENTS

3549

"(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

"(3) the displacement of businesses often results in their closure;

"(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

"(5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

"(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

"(c) It is the intent of Congress that—

"(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

"(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

"(3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

"(4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964.". (101 Stat. 248)

EXPLANATORY NOTE

**Reference in the Text.** Title VIII of the Act of April 11, 1968 (Public Law 90-284; 42 U.S.C. § 3601.) referenced above does not appear herein. Extracts from title VI of the Civil rights Act of 1964, as amended, (42 U.S.C. § 2000d.) appears in Supplement I at page S625.

**Sec. 405. [Moving and related expenses.]—(a) [Business reestablishment expenses.]—**Section 202(a) of the Uniform Act (42 U.S.C. § 4622(a)) is amended—

(1) by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

April 2, 1987

3550

RELOCATION ACT AMENDMENTS

"(a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—";

(2) by striking out "and" at the end of paragraph (2);

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000." (101 Stat. 249)

**(b) [Alternative residential allowance.]**—Section 202(b) of the Uniform Act (42 U.S.C. § 4622(b)) is amended by striking out all that follows "may receive" and inserting in lieu thereof "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency."

**(c) [Alternative business allowance.]**—Section 202(c) of the Uniform Act (42 U.S.C. § 4622(c)) is amended to read as follows:

"(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than \$1,000 nor more than \$20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection."

**(d) [Certain utility relocation expenses.]**—Section 202 of the Uniform Act (42 U.S.C. § 4622) is amended by adding at the end thereof the following new subsection:

"(d)(1) Except as otherwise provided by Federal law—

"(A) if a program or project (I) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

"(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

"(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed

April 2, 1987

RELOCATION ACT AMENDMENTS

3551

the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

"(2) For purposes of this subsection, the term—

"(A) 'extraordinary cost in connection with a relocation' means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

"(i) to be a non-routine relocation expense;

"(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

"(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

"(B) 'utility facility' means—

"(i) any electric, gas, water, steam power, or materials transmission or distribution system;

"(ii) any transportation system;

"(iii) any communications system (including cable television); and

"(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned." . (101 Stat. 249)

**Sec. 406. [Replacement housing for homeowner.]**—Section 203(a) of the Uniform Act (42 U.S.C. § 4623(a)) is amended—

(1) by striking out "Federal" in the portion of paragraph (1) preceding subparagraph (A) and inserting in lieu thereof "displacing";

(2) by striking out "\$15,000" and inserting in lieu thereof "\$22,500";

(3) by striking out "acquired by" and all that follows through "the additional payment." in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.";

(4) by striking out paragraph (1)(B) and inserting in lieu thereof the following:

"(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling."; and

(5) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary

April 2, 1987

3552

RELOCATION ACT AMENDMENTS

replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date." (101 Stat. 251; 42 U.S.C. § 4625.)

**Sec. 407. [Replacement housing for tenants and certain others.]**—Section 204 of the Uniform Act (42 U.S.C. § 4624) is amended to read as follows:

"REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

"Sec. 204. [Disadvantaged persons.]—(a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

"(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations." (101 Stat. 251)

**Sec. 408. [Relocation planning, assistance coordination, and advisory services.]**— Section 205 of the Uniform Act (42 U.S.C. § 4625) is amended to read as follows:

April 2, 1987

RELOCATION ACT AMENDMENTS

3553

"RELOCATION PLANNING, ASSISTANCE COORDINATION,  
AND ADVISORY SERVICES

"Sec. 205. [Business and industry—Agriculture and agricultural commodities.]—(a) Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

"(b) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

"(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

"(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

"(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

"(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

"(A) a major disaster as defined in section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. § 5122.);

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the above appear in Volume IV at page 2843. Disaster Relief Act of 1974, Act of May 22, 1974 Section 102 of the 1974 Act does not appear (Public Law 93-288, 88 Stat. 143) referenced herein.

"(B) a national emergency declared by the President; or

"(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

April 2, 1987

3554

RELOCATION ACT AMENDMENTS

"(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

"(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

"(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

"(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

"(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this title with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

"(f) Notwithstanding section 101(6) of this Act, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency." (101 Stat. 252; 42 U.S.C. § 4601.)

**Sec. 409. [Housing replacement by Federal agency as last resort.]**—Section 206 of the Uniform Act (42 U.S.C. § 4626) is amended to read as follows:

"HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

"Sec. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 203 and 204 on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

"(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial

April 2, 1987

RELOCATION ACT AMENDMENTS

3555

assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.". (101 Stat. 253)

**Sec. 410. [Assurances.]**—Section 210 of the Uniform Act (42 U.S.C. § 4630) is amended by striking out "State agency" the first place it appears and inserting in lieu thereof "displacing agency (other than a Federal agency)"; by striking out "State agency" the second place it appears and inserting in lieu thereof "displacing agency"; and by striking out "decent, safe, and sanitary" in paragraph (3) and inserting in lieu thereof "comparable". (101 Stat. 254)

**Sec. 411. [Federal share of costs.]—(a) [General rule.]**—Section 211(a) of the Uniform Act (42 U.S.C. § 4631(a)) is amended to read as follows:

"(a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.". (42 U.S.C. § 4651.)

**(b) [Limitation.]**—Section 211(b) of the Uniform Act (42 U.S.C. § 4631(b)) is amended to read as follows:

"(b) No payment or assistance under this title or title III of this Act shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.". (101 Stat. 254)

**Sec. 412. [Duties of lead agency.]**—Section 212 of the Uniform Act (42 U.S.C. § 4633) is amended to read as follows:

"DUTIES OF LEAD AGENCY

"Sec. 213. [Regulations.]—(a) The head of the lead agency shall—"(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this Act;

"(2) [Housing—Disadvantaged persons.]—ensure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

"(3) [Reports.]—monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

April 2, 1987

3556

RELOCATION ACT AMENDMENTS

"(4) perform such other duties as may be necessary to carry out this Act.

"(b) [Regulations.]—The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

"(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;

"(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

"(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

"(c) The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority only with respect to relocation assistance under this title and title I." (101 Stat. 254; 42 U.S.C. § 4621, 4601.).

**Sec. 413. [Payments under other laws.]**—Section 216 of the Uniform Act (42 U.S.C. § 4636) is amended by inserting after "Federal law" the following: "(except for any Federal law providing low-income housing assistance)".

**Sec. 414. [Transfer of surplus property.]**—Section 218 of the Uniform Act (42 U.S.C. § 4638) is amended by inserting "net" after "all".

**Sec. 415. [Repeals.]**—Sections 214, 217, and 219 of the Uniform Act (84 Stat. 1902; 42 U.S.C. §§ 4634 and 4637) are hereby repealed. (101 Stat. 255)

**Sec. 416. [Uniform policy on real property acquisition practices.]—(a) [Waiver of appraisal.]**—Section 301(2) of the Uniform Act (42 U.S.C. § 4651(2)) is amended by inserting before the period at the end thereof the following: ", except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value".

**(b) [Acquisition of uneconomic remnant.]**—Section 301(9) of the Uniform Act (42 U.S.C. § 4651(9)) is amended to read as follows:

"(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner."

**(c) [Donations.]**—Section 301 of the Uniform Act (42 U.S.C. § 4651) is amended by adding at the end thereof the following new paragraph:

April 2, 1987

RELOCATION ACT AMENDMENTS

3557

"(10) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine." (101 Stat. 255)

**Sec. 417. [Assurances.]**—Section 305 of the Uniform Act (42 U.S.C. § 4655) is amended by inserting "(a)" after "Sec. 305.", by striking out "a State agency" the first place it appears and inserting in lieu thereof "an acquiring agency", by striking out "State agency" the second place it appears and inserting in lieu thereof "acquiring agency", and by adding at the end thereof the following new subsection:

"(b) For purposes of this section, the term 'acquiring agency' means—

"(1) a State agency (as defined in section 101(3)) which has the authority to acquire property by eminent domain under State law, and

"(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation." (101 Stat. 256)

**Sec. 418. [Effective date.]**—The amendment made by section 412 of this title (to the extent such amendment prescribes authority to develop, publish, and issue regulations) shall take effect on the date of the enactment of this title. This title and the amendments made by this title (other than the amendment made by section 412 to such extent) shall take effect on the effective date provided in such regulations but not later than 2 years after such date of enactment. (101 Stat. 256)

\* \* \* \* \*

(101 Stat. 261)

EXPLANATORY NOTE

**Legislative History.** H.R. 2 (S. 387), Public Law 100-17 in the 100<sup>th</sup> Congress. H.R. 2 passed the House January 21, 1987. Reported in the Senate from Environment and Public Works; S. Repts. 100-4 accompanying S. 387. S. 387 passed the Senate February 3, 1987. H.R. 2 passed Senate, amended, in lieu of S. 387 February 4, 1987. House disagreed to Senate

amendments February 19, 1987. House agreed to H.R. Rept. No. 100-27 from Conference March 19, 1987. Senate agreed to conference report March 19, 1987. Presidential veto messages March 27, 1987. House overrode veto March 31, 1987. Senate overrode veto April 2, 1987.

December 18, 1987

3558

### RECLAMATION AUTHORIZATION ACT OF 1976 AMENDMENT

An Act to amend the Reclamation Authorization Act of 1976 (90 Stat. 1324, 1327). (Act of December 18, 1987, Public Law 100-196, 101 Stat. 1313)

**[Authorized funding Increase.]**—Section 208 of the Reclamation Authorization Act of 1976 (90 Stat. 1324, 1327) is amended by deleting "\$39,370,000 (January 1976 prices), plus or minus such amounts, if any," and inserting in lieu thereof "\$88,000,000 (January 1987 prices): *Provided*, That of the \$88,000,000 authorized herein, only \$18,000,000 thereof may be adjusted by such amounts, plus or minus,".

#### EXPLANATORY NOTES

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

**Reference in the Text.** Section 208 of the Reclamation Authorization Act of 1976, Act of September 28, 1976 (Public Law 94-423, 90 Stat. 1327) referenced above appears in Volume IV at page 2954. Amendments and

annotations of the 1976 Act appear in Supplement II at page S1056.

**Legislative History.** S. 649, Public Law 100-196 in the 100<sup>th</sup> Congress. Passed Senate October 8, 1987. Passed House December 8, 1987.

December 22, 1987

3559

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT OF 1988**

[Extracts from] An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1988, and for other purposes. (Act of December 22, 1987, Public Law 100-202, 101 Stat. 1329)

\* \* \* \* \*

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

\* \* \* \* \*

CONSTRUCTION PROGRAM

(INCLUDING TRANSFER OF FUNDS)

\* \* \* \* \*

**[Study construction of the Cliff Dam feature of the Central Arizona Project prohibited—Plan 6 features defined.]** None of the funds appropriated in this Act shall be used to study or construct the Cliff Dam feature of the Central Arizona Project: *Provided further*, That Plan 6 features of the Central Arizona Project other than Cliff Dam, including (1) water rights and associated lands within the State of Arizona acquired by the Secretary of the Interior through purchase, lease, or exchange, for municipal and industrial purposes, not to exceed 30,000 acre-feet; and, (2) such increments of flood control that may be found to be feasible by the Secretary of the Interior at Horseshoe and Bartlett Dams, in consultation and cooperation with the Secretary of the Army and using Corps of Engineers evaluation criteria, developed in conjunction with dam safety modifications and consistent with applicable environmental law, are hereby deemed to constitute a suitable alternative to Orme Dam within the meaning of the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.)(101 Stat. 1329-114)

EXPLANATORY NOTE

**Reference in the Text.** The Colorado River Basin Project Act, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 885; 43 U.S.C. 1501 et seq.) referenced above appears in Volume IV at page 2395. Amendments and annotations of the 1968 Act appear in Supplement II at page S995.

December 22, 1987

3560

APPROPRIATIONS ACT OF 1988

\* \* \* \* \*

**[James River Comprehensive Report.]**—Notwithstanding the provisions of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99-294), the James River Comprehensive Report on water resource development proposals may be submitted to Congress at a date after September 30, 1988, but not later than September 30, 1989. (101 Stat. 1329-114)

EXPLANATORY NOTE

**Reference in the Text.** The Garrison Diversion Unit Reformulation Act of 1986, Act of May 12, 1986 (Public Law 99-294, 100 Stat. 418) referenced above appears in Volume V at page 3464.

\* \* \* \* \*

GENERAL PROVISIONS

\* \* \* \* \*

**Sec. 205. [Farwell Unit drainage facilities—Costs nonreimbursable.]**—In accordance with repayment contract No. 9-07-70W0363, entered into August 29, 1979, as amended December 18, 1981, for the Farwell Irrigation District, contractual party with the Farwell Unit, Middle Loup Division, Pick-Sloan Missouri Basin Program, and entitled "Contract between the United States of America and the Farwell Irrigation District for Additional Drainage Facilities", the costs of such project allocated to irrigation and drainage shall not be reimbursable. Payments already made under such contract shall be credited against overall payments due the United States. (101 Stat. 1329-118)

\* \* \* \* \*

**Sec. 207. [Hilltop Irrigation District integrated unit of Pick-Sloan Missouri Basin Program.]**—The Secretary of the Interior is directed to use not to exceed \$70,000 in fiscal year 1988 for soil classification studies required to complete the integration of the Hilltop Irrigation District as a Federal unit of the Pick-Sloan Missouri River Basin Program.

**Sec. 208. [City of Dickinson, North Dakota—Obligations forgiven—New repayment contract authorized.]**—(a) Notwithstanding title II of the Reclamation Authorization Act of 1975 (Public Law 94-228), the city of Dickinson, North Dakota, is forgiven all obligations incurred by such city under the contract (numbered 9-07-60-WRO52) entered into with the Secretary of the Interior or his delegatee.

December 22, 1987

APPROPRIATIONS ACT OF 1988

3561

(b)(1) The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, is authorized to enter into a new repayment contract with the city of Dickinson the terms of which shall entitle the city of Dickinson to water supply benefits provided by the bascule gate project authorized by title II of the Reclamation Authorization Act of 1975 in consideration for repayment of the costs of the bascule gate project as provided in paragraph (2).

(2) Repayment terms of the new contract shall provide for—

(A) repayment by the city of Dickinson of the capital cost of the bascule gate project of \$1,625,000 over a period of 40 years at an interest rate of 7.21 per centum per annum; and

(B) payment of the annual operation, maintenance, and replacement costs of the project facilities.

EXPLANATORY NOTE

**Reference in the Text.** The Reclamation Authorization Act of 1975, Act of March 11, 1976 (Public Law 94-228, 90 Stat. 205) referenced above appears in Volume IV at page 2934. Amendments and annotations of the 1975 Act appear in Supplement II at page 1054.

**Sec. 209. [City of Minot, North Dakota, relieved of liability for repayment.]—**(a) Notwithstanding any other provisions of law, the city of Minot, North Dakota, is relieved of all liability for repayment to the United States of the sum of \$1,026,489.29 associated with the excess capacity of the Minot Pipeline resulting from enactment of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99-294).

(b) The relief from liability for repayment granted by subsection (a) shall be effective retroactive to January 1, 1978, the start of the city of Minot's repayment obligation under the 1972 repayment contract with the Bureau of Reclamation.

(c) If the excess capacity referred to in subsection (a) is ever used, the city of Minot shall reimburse the United States for the costs referred to in subsection (a) proportionate to the actual use of the excess capacity. (101 Stat. 1329-118)

**Sec. 210. [McGee Project completion—Title transfer—Refinancing.]—***Deleted.* (101 Stat. 1329-119, 103 Stat. 667)

EXPLANATORY NOTE

**Section Deleted.** Section 205 of the Act of September 29, 1989 (Public Law 101-101, 103 Stat. 667) provided that Section 210 . . . is hereby deleted in its entirety. The 1989 Act appears in Volume V in chronological order. Prior to its repeal, section 210 read as follows:

"(a) The McGee Creek Project of the Bureau of Reclamation shall not be deemed completed until such time as construction of all authorized components of the project are completed,

including access roads and recreation areas.

(b) The Bureau of Reclamation shall not transfer title of the project to any other entity or require repayment of the project or permit refinancing of the project until such time as the project is completed according to the terms of (a) above."

Extracts from the 1989 Act appear in Volume V at page 3648.

**Sec. 211. [Office of the Commissioner, certain officials and professional staff with certain expertise to remain in Washington, D.C.—Acreage Limitation Branch to remain in Denver, Colorado.]**—The Secretary is prohibited from transferring the Office of the Commissioner of the Bureau of Reclamation, the Assistant Commissioner for Administration and the Office of Foreign Activities from Washington, D.C. to Denver, Colorado and shall have in the Washington office a minimum of sixty professional staff experienced in the following areas: Budget, Foreign Activities, Contracts and Repayment, Resource Development and Management; Construction; and Congressional and Public Affairs. The Secretary is further prohibited from transferring the Acreage Limitation Branch from Denver, Colorado to Washington, D.C. In addition, the Bureau shall maintain appropriate administrative support personnel for the Washington Office. The Secretary shall submit quarterly reports to the Congress, beginning January 1988, on Washington office reorganization initiatives to reduce overhead and duplication. (101 Stat. 1329-119)

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GENERAL PROVISIONS—DEPARTMENT OF ENERGY

\* \* \* \* \*

**Sec. 310. [Small power production facilities—Solar—Geothermal.]**—(a) The amendments made by section 643(b) of the Energy Security Act (Public Law 90-294; 16 U.S.C. § 824a-3 note.) to implement such amendment shall apply to qualifying small power production facilities (as such term is defined in the Federal Power Act) using solar energy as the primary energy source to the same extent such amendments and regulations apply to qualifying small power production facilities using geothermal energy as the primary energy source, except that nothing in this Act shall preclude the Federal Energy Regulatory Commission from revising its regulations to limit the availability of exemptions authorized under this Act as it determines to be required in the public interest and consistent with its obligations and duties under section 210 of the Public Utility Regulatory Policies Act of 1978.

(b) The provisions of subsection (a) shall apply to a facility using solar energy as the primary energy source only if either of the following is submitted to the Federal Energy Regulatory Commission during the two-year period beginning on the date of enactment of this Act:

- (1) An application for certification of the facility as a qualifying small power production facility.
- (2) Notice that the facility meets the requirements for qualification. (101 Stat. 1329-126)

December 22, 1987

APPROPRIATIONS ACT OF 1988

3563

EXPLANATORY NOTE

**References in the Text.** Section 643(b) of the Energy Security Act, Act of June 30, 1980, (Public Law 96-294, 94 Stat. 770; 16 U.S.C. § 824a-3) does not appear herein.

Part I of the Federal Water Power Act, Act of June 10, 1920, (ch. 285, 41 Stat. 1063) appears in Volume I at page 262, in Supplement I at

page S56, and Supplement II at page S813.

Extracts from the Public Utility Regulatory Policies Act of 1978, Act of November 9, 1978 (Public Law 95-617 92 Stat. 3117) appear in Volume IV at page 3137 and in Supplement II at page S1071.

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EXPLANATORY NOTES

**Not Codified.** The extracts from Public Law 100-202 contained herein 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. 395, Public

Law 100-202 in the 100<sup>th</sup> Congress. Reported in the House from Appropriations; H.R. Repts. No. 100-415 and No. 100-498 (Conference). Passed House December 3, 1987. Reported in the Senate from Appropriations; S. Rept. No. 100-238. Passed Senate on December 11, 1987, amended. House and Senate agreed to conference report on December 21, 1987.

**OMNIBUS BUDGET RECONCILIATION ACT OF 1987**

**[Extracts form]** An Act To provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988. (Act of December, 22, 1987, Public Law 100-203, 101 Stat. 1330)

**Section 1. [Short title.]**—This Act may be cited as the "Omnibus Budget Reconciliation Act of 1987".

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**Subtitle B—Federal Onshore Oil and Gas Leasing Reform Act of 1987**

\* \* \* \* \*

**Sec. 5109. [Payments to states.]**—Section 35 of the Act of February 25, 1920 (30 U.S.C. 191) is amended by adding the following at the end thereof: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.". (101 Stat. 1330 - 261)

EXPLANATORY NOTE

**Reference in the Text.** Section 35 of the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. § 191) cited in section 5109 appears in Volume I at page 249, in Supplement I at page S53, and in Supplement II at page S808.

\* \* \* \* \*

**Sec. 5113. [Short title.]**—The Act of February 25, 1920, is amended by inserting after section 43 the following new section:

"Sec. 44. [Short title.]—This Act may be cited as the 'Mineral Leasing Act' ". (101 Stat. 1330 - 263)

\* \* \* \* \*

**Subtitle C—Land and Water Conservation Fund and Tongass Timber Supply Fund**

**Sec. 5201. [Land and Water Conservation Fund Act amendments.]**—**(a)[Admission fees.]**—Section 4(a) of the Land and Water Conservation Fund

December 22, 1987

OMNIBUS BUDGET RECONCILIATION ACT OF 1987 3565

Act of 1965 (16 U.S.C. § 4601-6a(a)) is amended as follows:

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

(2) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the following new subparagraph at the end thereof:

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

(3) Paragraph (2) is amended by adding the following sentences at the end thereof: "The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than \$5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than \$3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas."

(4) Paragraph (3) is amended by adding the following new sentence at the end thereof: "Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations."

(5) Add the following new paragraphs:

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

"(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees. (101 Stat. 1330 - 263)

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

December 22, 1987

3566 OMNIBUS BUDGET RECONCILIATION ACT OF 1987

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

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

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

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

"(12) Notwithstanding section 203 of the Alaska National Interest Lands Conservation Act, the Secretary may charge an admission fee under this section at Denali National Park and Preserve in Alaska." (101 Stat. 1330 - 263)

EXPLANATORY NOTE

**Reference in the Text.** The Land and Water Conservation Fund Act of 1965 cited repeatedly in section 5201 appears in Volume III at page 1785, in Supplement I at page S359, and in Supplement II at page S892.

**(b) [Visitor reservation services.]**—Section 4(f) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 460/-6a(f)) is amended to read as follows:

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

December 22, 1987

OMNIBUS BUDGET RECONCILIATION ACT OF 1987 3567

**(c) [Special provisions.]**—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 460/6a) is amended by adding the following new subsections at the end thereof:

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

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

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

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

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

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

"(j)(1) 10 percent of the funds made available to the Director of the National Park Service under subsection (I) in each fiscal year shall be allocated among units of the National Park System on the basis of need in a manner to be determined by the Director. (101 Stat. 1330 - 264)

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

December 22, 1987

3568 OMNIBUS BUDGET RECONCILIATION ACT OF 1987

subsection and 50 percent shall be allocated in accordance with paragraph (4) of this subsection.

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

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

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

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

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

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

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

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

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

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

December 22, 1987

OMNIBUS BUDGET RECONCILIATION ACT OF 1987 3569

the unit where the charge was imposed. The remaining 50 percent of the retained amount shall be expended only for activities related to resource protection at such units. (101 Stat. 1330 - 264).

"(m) Where the primary public access to a unit of the National Park System is provided by a concessioner, the Secretary may charge an admission fee at such units only to the extent that the total of the fee charged by the concessioner for access to the unit and the admission fee does not exceed the maximum amount of the admission fee which could otherwise be imposed under subsection (a).".

**(d) [Repeals.]**—(1) Title I of Public Law 96-514 is amended by striking out the following provisions which appear under the heading "Land and Water Conservation Fund": "Notwithstanding the provisions of Public Law 90-401, revenues from recreation fee collections by Federal agencies shall hereafter be paid into the Land and Water Conservation Fund, to be available for appropriation for any or all purposes authorized by the Land and Water Conservation Fund Act of 1965, as amended, without regard to the source of such revenues.". (16 U.S.C. § 460/5a.)

(2) Section 402 of the Act of October 12, 1979 (93 Stat. 664), is hereby repealed. (16 U.S.C. § 460/6b.)

(3) The seventh paragraph of title I of the Energy and Water Development Appropriation Act, 1982, entitled "Special Recreation Use Fees" is hereby repealed. (101 Stat. 1330 - 266) (16 U.S.C. § 460/5a note.)

EXPLANATORY NOTE

**References in the Text.** Public Laws 96-514 and 90-401, Section 402 of the Act of October 12, 1979 (93 Stat. 664), and the seventh paragraph of title I of the Energy and Water Development Appropriation Act, 1982, entitled "Special Recreation Use Fees" cited in subsection 5201(d) do not appear herein.

**(e) [Study.]**—(1) The Secretary of the Interior shall assess the extent to which traffic congestion and overcrowding occurs at certain park system units during times of seasonally high usage and shall conduct a study of the following—

(A) the feasibility of reducing vehicular traffic within national park system units through fee reductions for visitors traveling by bus and through other means which could shift visitation from automobiles to buses; and

(B) the feasibility of encouraging more even seasonal distribution of visitation. (16 U.S.C. § 460/6a note.)

(2) The study shall include a pilot project to be carried out in Yosemite National Park. For purposes of such pilot project, the Secretary may reduce the fees for admission of various classes or categories of visitors to Yosemite National Park and may reduce the admission fees imposed at the park during seasons with low visitation. A report containing the results of the study shall be transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural

December 22, 1987

3570 OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Resources of the United States Senate within 3 years after the enactment of this Act.

**(f) [Extension of Land And Water Conservation Fund.]**—(1) Section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 460/ and following) is amended as follows:

(A) In the matter preceding subsection (a) strike "1989" and substitute "2015". (16 U.S.C. § 460/5.)

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

(2) The last sentence of section 3 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 460/ and following) is amended to read as follows: "Moneys made available for obligation or expenditure from the fund or from the special account established under section 4(I)(1) may be obligated or expended only as provided in this Act.". (16 U.S.C. § 460/6.)

**(g) [Relationship to fiscal year 1988 appropriations.]**—For purposes of legislation providing appropriations for the fiscal year 1988 to the Department of the Interior, the provisions of this section shall be treated as "permanent statutory language" establishing entrance fees for the National Park Service. (101 Stat. 1330-267)

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**Subtitle D—Reclamation**

**Sec. 5301. [Sale of Bureau of Reclamation loans.]**—(a) **[Sale.]**—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary"), under such terms as the Secretary shall prescribe, shall sell or otherwise dispose of loans made pursuant to the Distribution System Loans Act (43 U.S.C. § 421a-421d), the Small Reclamation Projects Act (43 U.S.C. § 422a-422l), and the Rehabilitation and Betterment Act (43 U.S.C. §§ 504-505) in such amounts as to realize net proceeds to the Federal Government of not less than \$130,000,000 in the fiscal year ending September 30, 1988. In the conduct of such sales, the Secretary shall take such actions as he deems appropriate to accommodate, effectuate, and otherwise protect the rights and obligations of the United States and the borrowers under the contracts executed to provide for repayment of such loans.

EXPLANATORY NOTE

**References in the Text.** The Distribution System Loans Act (43 U.S.C. 421a-421d), the Small Reclamation Projects Act (43 U.S.C. § 422a-422l), and the Rehabilitation and Betterment Act (43 U.S.C. 504-505) cited in subsection 5301(a) appear in Volume II at pages 1218 and 1264; 1331; and 969, respectively. Amendments and annotations appear in Volume IV at pages 2661 and in Supplement I

at pages S233-S238 for the Distribution System Loans Act; in Volume IV at pages 2641, 2932, 3203, and 3345, in Supplement I at pages S268-S278, and in Supplement II at page S875 for the Small Reclamation Projects Act; and in Volume IV at page 2927, in Supplement I at pages S189-S192, and in Supplement II at page S864 from the Rehabilitation and Betterment Act.

December 22, 1987

OMNIBUS BUDGET RECONCILIATION ACT OF 1987 3571

**(b) [Savings provisions.]**—Nothing in this section, including the prepayment or other disposition of any loan or loans, shall—

(1) except to the extent that prepayment may have been authorized heretofore, relieve the borrower from the application of the provisions of Federal Reclamation law (Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto, including the Reclamation Reform Act of 1982), including acreage limitations, to the extent such provisions would apply absent such prepayment, or

(2) authorize the transfer of title to any federally owned facilities funded by the loans specified in subsection (a) of this section without a specific Act of Congress.

EXPLANATORY NOTE

**References in the Text.** The Reclamation and as subsequently amended in Supplement II Reform Act of 1982 cited there and in section at page S1092. 5302 below appears in Volume IV at page 3334

**(c) [Fees and expenses of program.]**—Proceeds from the conduct of the program authorized by this section shall be first used to pay the fees and expenses of such program and the net proceeds shall be deposited in the Treasury of the United States as miscellaneous receipts.

**(d) [Termination.]**—The authority granted by this section to sell or otherwise dispose of loans shall terminate on December 31, 1988. (101 Stat.1330-268; 43 U.S.C. § 421b note.)

\* \* \* \* \*

**Sec. 5302. [Reclamation Reform Act amendments.]—(a) [Audit.]**—Section 224 of the Reclamation Reform Act of 1982 (Public Law 97-293) is amended by adding the following new subsections after subsection (f):

"(g) In addition to any other audit or compliance activities which may otherwise be undertaken, the Secretary of the Interior, or his designee, shall conduct a thorough audit of the compliance with the reclamation law of the United States, specifically including this Act, by legal entities and individuals subject to such law. At a minimum, the Secretary shall complete audits of those legal entities and individuals whose landholdings or operations exceed 960 acres within 3 years. The Secretary shall submit an annual written report to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs. Such report shall summarize the legal entities and individuals audited, the results of such audits, and the actions taken by the Secretary to correct any instances of noncompliance with the reclamation law.

"(h) The provisions of section 205(c) are and have been applicable to all recordable contracts executed prior to October 12, 1982, and any decision, rule,

December 22, 1987

3572 OMNIBUS BUDGET RECONCILIATION ACT OF 1987

or regulation promulgated by the Department of the Interior to the contrary is hereby revoked: *Provided*, That notwithstanding the provisions of subsection (i), the Secretary shall not seek reimbursement for any amounts due under this subsection or section 205(c) which was due prior to the date of enactment of this subsection.

"(i) When the Secretary finds that any individual or legal entity subject to reclamation law, including this Act, has not paid the required amount for irrigation water delivered to a landholding pursuant to reclamation law, including this Act, he shall collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing marketable issues sold by the Treasury during the period of underpayment." (43 U.S.C. § 390ww.)

**(b) [Revocable trusts.]**—Section 214 of the Reclamation Reform Act of 1982 (Public Law 97-293) is amended by inserting "(a)" after "214" and by adding the following new subsection at the end thereof:

"(b) Lands placed in a revocable trust shall be attributable to the grantor if—

"(1) the trust is revocable at the discretion of the grantor and revocation results in the title to such lands reverting either directly or indirectly to the grantor; or

"(2) the trust is revoked or terminated by its terms upon the expiration of a specified period of time and the revocation or termination results in the title to such lands reverting either directly or indirectly to the grantor." (101 Stat. 1330-268; 43 U.S.C. § 390nn.)

\* \* \* \* \*

EXPLANATORY NOTE

<b>Legislative History.</b> H.R. 3545 (S. 1920) considered in the Senate December 9, 1987.	
Public Law 100-203 in the 100 <sup>th</sup> Congress. H.R. 3545 passed Senate, amended, in lieu of S.	
Reported in the House from Budget; H.R. 1920 December 10, 1987. House and Senate	
Repts. No. 100-391 and 100-495 (Conference). agreed to conference report 100-495 December	
Passed the House October 29, 1987. S. 1920 21, 1987.	

August 11, 1988

3573

## DISASTER ASSISTANCE ACT OF 1988

[Extracts from] An Act to provide drought assistance to agricultural producers, and for other purposes. (Public Law 100-387, 102 Stat. 924, 7 U.S.C. § 1421 note.)

\* \* \* \* \*

### Subtitle B—Emergency Drought Authority

#### PART I—RECLAMATION STATES DROUGHT ASSISTANCE ACT OF 1988

**Sec. 411. [Short Title.]**—This part may be cited as the "Reclamation States Drought Assistance Act of 1988".

**Sec. 412. [Assistance during drought.]**—The Secretary of the Interior, acting under the authorities of the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto and amendatory thereof) and other appropriate authorities of the Secretary shall—

(1)(A) perform studies to identify opportunities to augment, make use of, or conserve water supplies available to Federal reclamation projects and Indian water resource developments, which studies shall be completed no later than March 1, 1990; and

(B) consistent with existing contractual arrangements and State law, and without further authorization, undertake construction, management, and conservation activities that will mitigate or can be expected to have an effect in mitigating losses and damages resulting from drought conditions in 1987, 1988, or 1989, which construction shall be completed by December 31, 1989; and

(2) assist willing buyers in their purchase of available water supplies from willing sellers and redistribute such water based upon priorities to be determined by the Secretary consistent with State law, with the objective of minimizing losses and damages resulting from drought conditions in 1987, 1988, and 1989. (102 Stat. 957, 43 U.S.C. § 502 note.)

**Sec. 413. [Availability of water on a temporary basis.]—(a) [General authority.]**—The Secretary of the Interior may make available, by contract, consistent with existing contracts or agreements and State law, water or canal capacity at existing Federal reclamation projects to water users and others, on a temporary basis to mitigate losses and damages resulting from drought conditions in 1987, 1988, and 1989.

**(b) [Contracts.]**—Any contract signed under this section shall provide that—

(1) the price for the use of such water shall be at least sufficient to recover all Federal operation and maintenance costs, and an appropriate share of capital

August 11, 1988

3574

DISASTER ASSISTANCE ACT OF 1988

costs, except that, for water delivered to a landholding in excess of 960 acres of class I lands or the equivalent thereof for a qualified recipient and 320 acres of class I lands or the equivalent thereof for a limited recipient, the cost of such water shall be full cost (as defined in section 202(3)(A) of Public Law 97-293; 43 U.S.C. § 390bb) for those acres in excess of 960 acres or 320 acres, as appropriate;

(2) the lands not now subject to reclamation law that receive temporary irrigation water supplies under this section shall not become subject to the ownership limitations of Federal reclamation law because of the delivery of such temporary water supplies;

(3) the lands that are subject to the ownership limitations of Federal reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies; and

(4) the contract shall terminate no later than December 31, 1999.

EXPLANATORY NOTE

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

(c) **[Fish and wildlife.]**—The Secretary may make available water for the purposes of protecting fish and wildlife resources, including mitigating losses that occur as a result of drought conditions. (102 Stat. 957)

**Sec. 414. [Emergency Loan Program.]**—The Secretary of the Interior may make loans to water users for the purposes of undertaking management, conservation activities, or the acquisition and transportation of water consistent with State law, that can be expected to have an effect in mitigating losses and damages resulting from drought conditions in 1987, 1988, and 1989. Such loans shall be made available under such terms and conditions as the Secretary deems appropriate. Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293; 43 U.S.C. § 390cc) shall not apply to any contract to repay such loan. (102 Stat. 958)

**Sec. 415. [Interagency coordination.]**—The program established by this part, to the extent practicable, shall be coordinated with emergency and disaster relief operations conducted by other Federal and State agencies under other provisions of law. The Secretary of the Interior shall consult such other Federal and State agencies as he deems necessary. Other Federal agencies performing relief functions under other Federal authorities shall provide the Secretary with information and records that the Secretary deems necessary for the administration of this part.

**Sec. 416. [Report.]**—Not later than March 1, 1990, the Secretary of the Interior shall submit a report and recommendations to the President and Congress on—(1) expenditures and accomplishments under this part;

August 11, 1988

DISASTER ASSISTANCE ACT OF 1988

3575

(2) legislative and administrative recommendations for responding to droughts and drought related problems in the Reclamation States; and

(3) structural and non-structural measures to mitigate the effects of droughts. (102 Stat. 958)

**Sec. 417. [Carryover storage and water, New Melones Unit, Central Valley project, California.]**—The first undesignated paragraph under the heading "San Joaquin River Basin" in section 203 of the Flood Control Act of 1962 (Public Law 87-874, 76 Stat. 1191) is amended by inserting before the last period the following. "*And Provided further*, That the Secretary of the Interior is authorized to make available to the Oakdale and South San Joaquin irrigation districts, at the current contract rate, unallocated storage of such districts carried over from the previous year". (102 Stat. 959)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from Stat. 1191) referenced above appears in Volume section 203 of the Flood Control Act of 1962, III at page 1701 and Supplement II at page Act of October 23, 1962 (Public Law 87-874, 76 S890.

**Sec. 418. [Initiation and deadline of Emergency Drought Program.]—(a) [Limitation.]**—The programs and authorities established under this part shall become operative in any Reclamation State only after—

(1) the Governor of that State has declared a drought emergency; and

(2) the affected area is declared eligible for Federal disaster relief under applicable rules and regulations.

**(b) [Termination.]**—The programs and authorities established under this part shall terminate on December 31, 1989, unless otherwise specifically stated. (102 Stat. 959)

**PART 2—WATER PROJECT**

**Sec. 421. [Shasta Dam temperature control curtain—Demonstration project—Central Valley Project, California.]**—The Secretary of the Interior is authorized to install a temperature control curtain as a demonstration project at Shasta Dam, Central Valley project, California, at a cost not to exceed \$5,500,000. The purpose of the demonstration project is to determine the effectiveness of the temperature control curtain in controlling the temperature of water releases from Shasta Dam, so as to protect and enhance anadromous fisheries in the Sacramento River and San Francisco Bay/Sacramento-San Joaquin Delta and Estuary. (102 Stat. 959)

August 11, 1988

3576

DISASTER ASSISTANCE ACT OF 1988

**PART 3—AUTHORIZATION AND SAVINGS CLAUSE**

**Sec. 431. [Authorization of appropriations.]**—(a) There are authorized to be appropriated a total amount not to exceed \$25,000,000 for section 412(1)(B) and section 414 of this subtitle.

(b) Unless otherwise specified, there are authorized to be appropriated such sums as may be necessary to carry out the remaining provisions of this subtitle. (102 Stat. 959)

**Sec. 432. [Savings clause —Water on public land—Compacts between States.]**—Nothing in this subtitle 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 States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this subtitle, existing law applicable to the various Federal agencies; or

(5) as modifying the terms of any interstate compact. (102 Stat. 959)

\* \* \* \* \*

EXPLANATORY NOTE

**Legislative History.** H.R. 5015 (S. 2631), accompanying S. 2631 passed the Senate July 28, 1988. S. 2613 [sic] vitiated on July 29, 1988. Public Law 100-387 in the 100<sup>th</sup> Congress. H.R. 5015 passed the Senate, amended in lieu of S. 2613 [sic] on July 29, 1988. Senate agreed to conference report on August 8, 1988. House agreed to conference report on August 9, 1988. Reported in the House from Agriculture; H.R. Reports No. 100-800, Pt. 1 and No. 100-830 (Conference). Passed the House July 28, 1988. Reported in the Senate from Agriculture, Nutrition, and Forestry; S. Rept. No. 100-426

October 14, 1988

3577

**WEB PIPELINE PROJECT; USE OF PICK-SLOAN POWER;  
CENTRAL VALLEY PROJECT FACILITIES NAME CHANGES**

An Act to authorize additional appropriations for the WEB Rural Water Development Project, South Dakota, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and to rename certain facilities of the Central Valley Project, California. (Act of October 14, 1988, Public Law 100-490, 102 Stat. 2435)

**TITLE I—WEB PIPELINE PROJECT, SOUTH DAKOTA**

**Sec. 101. [Increase in authorization of appropriations.]**—In addition to the funds authorized to be appropriated for the construction of the WEB Rural Water Development project, authorized by section 9 of the Rural Development Policy Act of 1980 (Public Law 96-355, 94 Stat. 1175), as amended by section 2 of Public Law 97-273 (96 Stat. 1181), there are authorized to be appropriated therefor an additional sum of \$18,500,000 (March 1988 price levels), plus or minus such amounts, if any, as may be required by engineering cost indices applicable to such construction.

EXPLANATORY NOTE

**References in the Text.** Section 9 of the Rural Development Policy Act of 1980, Act of September 24, 1980 (Public Law 96-355, 94 Stat. 1175) referenced above appears in Volume IV at page 3207. Section 2 of the Act of September 30, 1982 (Public Law 97-273, 96 Stat. 1181) referenced above appears in Volume IV at page 3327, and Supplement II at page S1087.

**Sec. 102. [Use of Pick-Sloan Power.]**—Section 5 of Public Law 97-273 (96 Stat. 1182) is amended by inserting: (1) after "Omaha" the phrase "Lower Brule, including the Clark Ranch irrigation development," and (2) a period after the phrase "irrigation developments" and deleting the remainder of the sentence. (102 Stat. 2435)

**TITLE II—NAME CHANGE**

**Sec. 201. [B.F. Sisk San Luis Dam.]**—(a) The San Luis Dam of the San Luis Unit, Central Valley project, California, constructed, operated, and maintained under the Act of June 3, 1960 (Public Law 86-488, 74 Stat. 156), hereafter shall be known and designated as the "B.F. Sisk San Luis Dam".

(b) Any reference in any law, regulation, document, record, map, or other paper of the United States to the dam referred to in subsection (a) is hereby deemed to be a reference to the "B.F. Sisk San Luis Dam".

October 14, 1988

3578

CVP FACILITIES NAME CHANGES

EXPLANATORY NOTE

**Reference in the Text.** The Act of June 3, 1960 (Public Law 86-488, 74 Stat. 156) referenced above appears in Volume III at page 1524.

**Sec. 202. [William R. Gianelli Pumping-Generating Plant.]**—(a) The San Luis Pumping-Generating Plant of the San Luis Unit, Central Valley project, California, constructed, operated, and maintained under the Act of June 3, 1960 (Public Law 86-488, 74 Stat. 156), hereafter shall be known and designated as the "William R. Gianelli Pumping-Generating Plant".

(b) Any reference in any law, regulation, document, record, map, or other paper of the United States to the plant referred to in subsection (a) is hereby deemed to be a reference to the "William R. Gianelli Pumping-Generating Plant". (102 Stat. 2436)

**Sec. 203. [Clair A. Hill Whiskeytown Dam.]**—(a) The Whiskeytown Dam of the Central Valley project, California, constructed, operated, and maintained under the Act of August 26, 1937 (50 Stat. 850), and Acts supplementary and amendatory thereto, hereafter shall be known and designated as the "Clair A. Hill Whiskeytown Dam".

EXPLANATORY NOTE

**References in the Text.** The Act of August 26, 1937 (ch. 832, 50 Stat. 850) referenced above appears in Volume I at page 583. Also amendments and annotations of the 1937 Act appear in Supplement I at S118 and Supplement II at S852.

(b) Any reference in any law, regulation, document, record, map, or other paper of the United States to the plant referred to in subsection (a) is hereby deemed to be a reference to the "Clair A. Hill Whiskeytown Dam". (102 Stat. 2436)

EXPLANATORY NOTES

**Codification.** This Act is not codified in the U.S. Code. Senate from Energy and Natural Resources; S. Rept. No. 100-474. Passed House May 10, 1988.

**Legislative History.** H.R. 4267, Public Law 100-490 in the 100<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 100-582, Pt. 1. Reported in the House Passed Senate, amended, August 11, 1988. House concurred in Senate amendment October 3, 4, 1988.

October 20, 1988

3579

**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY WATER  
RIGHTS SETTLEMENT ACT OF 1988**

An Act to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes. (Act of October 20, 1988, Public Law 100-512, 102 Stat. 2549)

**Section 1. [Short title.]**—This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

**Sec. 2. [Congressional findings.]**—(a) The Congress finds and declares that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency largely depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 14, 1879, the United States Government established a reservation for the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, at the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910 and the Bartlett Dam Agreement of 1935; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to the water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) litigation to determine the full extent and nature of the Community's water rights and those of its allotted land owners, and damages thereto, is currently pending before the United States District Court in Arizona and in the United States Claims Court. The United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term

economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle their disputes to water and reduce the burdens of litigation;

(8) after more than two years of negotiations, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who all are party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, to provide for the orderly development of the Community's lands, and to prescribe a procedure for resolving such remaining claims which the Community and its allottees may have against the United States;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately thirty-two thousand acre-feet of surface water to the Community, provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, it is the purpose of this Act (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act. (102 Stat. 2549)

**Sec. 3. [ Definitions]**—For purposes of this Act—(a) "Agreement" means that agreement dated February 12, 1988, among the Salt River Pima Maricopa Indian Community; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto.

(b) "Allottees" mean owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(c) "Bartlett Dam Agreement" means the agreement between the United States and the Salt River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

October 20, 1988

SALT RIVER PIMA-MARICOPA WATER RIGHTS 3581

(d) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 *et seq.*).

(e) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(f) "Community" means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 461 *et seq.*).

(g) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(h) "Plan 6 Agreement" means the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; SRP; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C, and D thereto.

(i) "RID" means the Roosevelt Irrigation District, an irrigation district organized under the laws of Arizona.

(j) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(k) "Secretary" means the Secretary of the United States Department of the Interior.

(l) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation. (102 Stat. 2550)

EXPLANATORY NOTE

**References in the Text.** Title III of the Colorado River Basin Project Act of 1968, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 888; 43 U.S.C. § 1521 *et seq.*) referenced in subsection 3(d) appears in Volume IV at page 2398. Amendments and annotations of the 1968 Act appear in Supplement II at page S995. The Indian Reorganization Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. § 476) referenced in subsection 3(f) does not appear herein.

**Sec. 4. [Kent Decree reregulation.]**—(a) The Secretary is authorized and directed to designate seven thousand acre-feet (hereinafter referred to as "Designated Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River previously authorized by the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. § 506 *et seq.*), the Colorado River Basin Project Act of 1968 (43 U.S.C. §

October 20, 1988

3582 SALT RIVER PIMA-MARICOPA WATER RIGHTS

1501 *et seq.*), and the relevant provisions relating to "Construction Program" contained in title II of the Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes (Public Law 100-202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1.

(b) The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven. (102 Stat. 2551)

EXPLANATORY NOTE

**References in the Text.** The Reclamation Safety of Dams Act of 1978, Act of November 2, 1978 (Public Law 95-578, 92 Stat. 2471, as amended by the Act of August 28, 1984, Public Law 98-404, 98 Stat. 1481; 43 U.S.C. 506 *et seq.*) is in its original form in Volume IV at page 3127 and as amended in Supplement II at page S1068.

The Colorado River Basin Project Act of

1968, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 885; 43 U.S.C. § 1501 *et seq.*) appears in Volume IV at page 2397. Amendments and annotations of the 1968 Act appear in Supplement II at page S995.

Extracts from the Act of December 22, 1987 (Public Law 100-202, 101 Stat. 1329) appear in Volume V at page 3559.

**Sec. 5. [Bartlett Dam Agreement.]**—(a) The Secretary is directed to amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) for at least two hundred and ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Act, is deemed to be one hundred seventy-eight thousand, one hundred eighty-six acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) the total Community allotment of developed water under the Bartlett Dam Agreement generated during the calendar year is less than seven thousand acre-feet;

(3) the total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty thousand acre-feet.

(b) Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language: "ARTICLE 4. OPERATION OF STORAGE WORKS  
"The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part

October 20, 1988

SALT RIVER PIMA-MARICOPA WATER RIGHTS

3583

or all of the Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.' "

(c) Except as provided in subsections (a) and (b), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect. (102 Stat. 2552)

**Sec. 6. [Ratification and confirmation of contracts.]**—(a) The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Aqua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed, and declared to be valid.

(c) The Secretary is authorized and directed to revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "3.1" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(d) The Secretary is authorized and directed to execute and perform that agreement among the United States, the CAWCD, the RWCD, the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Arizona town of Gilbert providing for the assignment of a portion of the RWCD's entitlement to agricultural water service from the CAP and other matters in substantially the form of exhibit "12.3" to the Agreement, and such agreement is hereby ratified, confirmed, and declared to be valid.

(e) The Secretary is authorized and directed, at such time as the authorizations in section 10(b)(1) become effective, to certify that the lands within the RWCD are free from the ownership and full cost pricing limitations of Federal reclamation law. (102 Stat. 2552)

**Sec. 7. [Colorado River water exchange.]**—(a) On or before December 31, 1991, the Secretary shall acquire, from willing irrigation districts and their landowners (hereinafter "sellers"), rights to twenty-two thousand acre-feet of annual consumptive use of water from the main stream of the Colorado River in the State of Arizona with a contractual priority predating September 30, 1968, and which was not included by the Secretary, the Arizona Water Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the CAP for the purpose of establishing the initial allocations to non-Indian entities. Nothing in this Act shall alter the

October 20, 1988

3584 SALT RIVER PIMA-MARICOPA WATER RIGHTS

responsibilities of the United States under article V of the March 9, 1964, Decree of the United States Supreme Court in *Arizona versus California*, 376 U.S. 340.

EXPLANATORY NOTE

**1990 Amendment.** Subsection 411(h) of the Act of November 28, 1990 (Public Law 101-628, 104 Stat. 4491) amended section 7(a) above by striking the date "1990" and inserting in lieu thereof "1991." Section 411(h) of the 1990 Act appears in Volume V at page 3721.

(b) The Secretary is authorized, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are subject to provide for the discharge of any remaining repayment obligation which the irrigation districts owe the United States as of May 30, 1987, and to certify that the lands within the irrigation districts are free from the ownership and full cost pricing limitations of Federal reclamation law.

(c) The Secretary shall contract to deliver such water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona town of Gilbert, in exchange for water provided by these cities and the town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to CAP non-Indian municipal and industrial subcontractors of CAP water service. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to exhibits "3.h.1" through "3.h.7" to the Agreement, which exhibits substantially conform to the terms of the CAP municipal and industrial water service subcontracts to which each of such cities and the town are parties on the effective date of this Act, except that:

(1) there shall be no water service capital charges associated with water deliveries made pursuant to the contracts authorized by this section, except as otherwise provided in the Agreement;

(2) for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water to cities and the town pursuant to the contracts authorized by this section shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation;

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. § 485h(e)) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. § 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

October 20, 1988

SALT RIVER PIMA-MARICOPA WATER RIGHTS 3585

(d) Within one year of the date of enactment of this Act the cities and the town shall deposit \$9,000,000 in an escrow account as provided in the Agreement for the purposes of funding the acquisition of the rights to water referred to in subsection (a). On or after the date the waiver referred to in section 10(b)(1) becomes effective, monies shall be paid out of the escrow account to the United States in accordance with the Agreement: *Provided*, That such payment shall not exceed the costs incurred by the Secretary pursuant to subsection (a) or \$9,000,000, whichever amount is less. Any monies remaining in escrow account after payment to the United States shall be returned to cities and the town. If the waiver referred to in section 10(b)(1) do not become effective by December 31, 1991, all monies in the escrow account shall be returned to the cities and the town in accordance with the Agreement.

(e) Neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. § 390aa *et seq.*) [sic] by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange provided for in this section. (102 Stat. 2553)

EXPLANATORY NOTE

**References in the Text.** Section 304(b)(2) of the Colorado River Basin Project Act of 1968, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 891; 43 U.S.C. § 1524(b)(2) referenced in subsection 7(c)(3)) appears in Volume IV at page 2406. Amendments and annotations of the 1968 Act appear in Supplement II at page S995. The Reclamation Reform Act of 1982 appears as currently amended in Supplement II at page S1090.

**Sec. 8. [Water delivery contract amendments—Water lease.]**—(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the Community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Arizona town of Gilbert under the terms and conditions of the Project Water Lease set forth in exhibits "3.m.1" through "3.m.7" to the Agreement for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to perform the specific terms and conditions set forth in exhibit "3.j." to the Agreement.

(b) Notwithstanding other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "3.j." to the Agreement

October 20, 1988

3586 SALT RIVER PIMA-MARICOPA WATER RIGHTS

and the terms and conditions of the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement are hereby authorized, approved, and confirmed.

(e) Consistent with subsection (d)(1) of this section, the United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section 7(b) of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the cities and the town pursuant to the Community CAP Delivery Contract and the Project Water Leases herein authorized.

(d) The Community and the Secretary shall lease to the cities and the town, for a term commencing on January 1, 2000, and ending December 30, 2098, and for the total consideration of \$16,000,000 to be paid by the cities and the town to the Community, upon those terms reflected in the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement, up to thirteen thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Leases shall specifically provide that—

(1) the cities and the town, each in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided*, That such payments shall not be commenced earlier than October 1, 1998;

(2) except as otherwise provided in the Project Water Leases, the cities and the town shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Leases referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Except as authorized by this section, no water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation. (102 Stat. 2554)

**Sec. 9. [Construction and rehabilitation—Trust fund.]**—(a) The Secretary is directed—

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. § 1501 *et seq.*), to design and construct new facilities for the delivery of water from the Community's turnout on the CAP Granite Reef Aqueduct and from the Arizona Canal to the irrigable Community reservation lands

October 20, 1988

SALT RIVER PIMA-MARICOPA WATER RIGHTS 3587

lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement and to irrigable Community reservation lands south of the Arizona Canal at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act;

(2) pursuant to existing authority and obligation of the Snyder Act (25 U.S.C. § 13.), to deposit into the Community Trust Fund established under subsection (b)(1) \$17,000,000 for the rehabilitation and improvement of the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement; and

(3) to deposit into the Community Trust Fund the funds authorized to be appropriated by subsection (e) for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement, to defray the cost to the Community of CAP operation, maintenance and replacement charges, and for other economic and community development on the Salt River Indian Reservation.

EXPLANATORY NOTE

**References in the Text.** The Snyder Act appear herein. referenced in paragraph 2 above does not

(b)(1) As soon as practicable, the Community shall establish the Salt River Community Trust Fund into which shall be deposited—

(A) by the Secretary, the funds provided in paragraphs (2) and (3) of subsection (a), and

(B) by the State of Arizona, \$3,000,000 required by paragraph 20.2(b) of the Agreement.

(c) There is hereby authorized to be appropriated \$30,470,000 to carry out the provisions of paragraph (3) of subsection (a).

(d) Upon the completion of the actions described in section 12(a), the Trust Fund, principal and income, may be used by the 'Community', in its discretion, to fulfill the purposes of the Agreement and this Act, but no part of such fund may be used to make per capita payments to members of the Community.

(e) Effective with the payments into the Trust Fund by the Secretary of the amounts required under paragraph (A) of subsection (b)—

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund. (102 Stat. 2556, 104 Stat. 4491)

**Sec. 10. [Claims extinguishment—Waivers and releases.]—(a)(1)** There are extinguished—

(A) all Allottees' claims against the United States for damages for deprivation of water rights through December 31, 1991;

(B) all Allottees' claims against all persons other than the United States for damages for deprivation of water rights through December 31, 1991, for which damages are not recoverable under subparagraph (a)(1)(A) of this section; and

(c) all rights of Allottees to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including rights to surface water, ground water, and effluent.

(2) For purposes of paragraph (a)(1) of this section claims for water rights include all claims under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(3) The benefits realized by the Allottees under this Act shall constitute full and complete satisfaction of all Allottees' claims for water rights under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) that may accrue after the authorizations contained in paragraph (b)(1) of this section have become effective and which would otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(4) Consent is given to Allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to recover damages, if any, for the extinguishment of claims effected by subparagraphs (a)(1)(A) and (a)(1)(B) of this section: *Provided, however,* That any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section shall not be joined in the same action as a claim for damages for rights extinguished by subparagraph (a)(1)(A) of this section.

(5) The United States shall have a claim only against the Community for any judgment entered against it in any action for damages for water rights extinguished by subparagraph (a)(1)(B) of this section, and the Community shall not have sovereign immunity with respect to such claim.

(6)(A) With respect to any claim against the United States which is extinguished by subparagraphs (a)(1)(A) and (a)(1)(B), the United States may assert as a defense in any action brought pursuant to paragraph (a)(4) of this section the limitation of section 2501 of title 28, United States Code, as to damages incurred more than six years before the commencement of the action, but it shall not assert a timeliness defense as to damages incurred within six years before the commencement of the action.

October 20, 1988

SALT RIVER PIMA-MARICOPA WATER RIGHTS

3589

(B) With respect to any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section, the United States may assert as a defense any defense which the person whose liability was extinguished might have asserted in an action brought by the Allottees against him prior to the effective date of this Act.

(b)(1) The Community is authorized, as part of the performance of its obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community may have, or which it may have standing to assert on behalf of its members and Allottees, against the United States; the State of Arizona or 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.

(2) In any action asserted within two years after the date of enactment of this Act by the Community against the United States in the United States Claims Court for monetary damages based upon loss or impairment of water rights the United States may assert a limitation as to damages incurred more than eight years before the commencement of the action instead of the six year limitation of section 2501 of title 28, United States Code, and it shall not assert a timeliness defense as to damages incurred within eight years before the commencement of the action.

(c) The benefits realized by the Community under this Act shall constitute full and complete satisfaction of all monetary claims against the United States for any damages alleged to accrue after completion of the requirements of section 12(a).

(d) Except as provided in paragraph (a)(5) of this section and paragraphs 17.2 and 17.5 of the Agreement, the United States shall not assert any claim against any person in its own right or on behalf of the Community based upon—

(1) water rights or injuries to water rights of the Community, its members or Allottees; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community, its members or Allottees. (102 Stat. 2556)

(e) In the event the authorizations contained in paragraph (b)(1) of this section do not become effective pursuant to section 12(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

**Sec. 11. [Miscellaneous provisions.]—(a)** In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the Agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and

October 20, 1988

3590 SALT RIVER PIMA-MARICOPA WATER RIGHTS

any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) From and after the effective date of this Act, the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereinafter referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

(c) Upon the effective date of this Act as set forth in section 12, section 302 of the Colorado River Basin Project Act (43 U.S.C. § 1522.) shall no longer apply to the Community.

(d) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in regard to such costs against such lands.

(e) Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(f) To the extent the Agreement does not conflict with the provisions of this Act, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any actions required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(g) Effective as of the date of enactment of this Act, and, notwithstanding the provisions of section 177 of title 25 United States Code, the Salt River Pima-Maricopa Indian Community may, as to any land outside of the Salt River Pima-Maricopa Indian Reservation to which it holds fee title, leasehold interest or any other interest, sell, encumber, hypothecate, lease or otherwise deal with such land or interest in such land as any other owner, lessor or interest holder might, subject to the laws of the state within which the land is situated.

(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the Secretary and

October 20, 1988

SALT RIVER PIMA-MARICOPA WATER RIGHTS 3591

CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users. (102 Stat. 2558)

**Sec. 12. [Effective date.]**—(a) The authorizations contained in section 10(b)(1) of this Act shall not be effective until such time as—

- (1) the Secretary has fulfilled the requirements of sections 4 and 7;
- (2) the Bartlett Dam Agreement has been amended as provided in section 5;
- (3) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 6(c) and the assignment described in section 6(d) has been executed;
- (4) the funds required for the purpose of section 9(a)(1) have been appropriated;
- (5) the funds authorized by sections 9(a)(2) and 9(c) have been appropriated and deposited into the Community Trust Fund;
- (6) the State of Arizona has appropriated and deposited into the Community Trust Fund the \$3,000,000 required by paragraph 20.2(b) of the Agreement;
- (7) the stipulation which is attached to the Agreement as exhibit "3.e." has been approved; and
- (8) the Agreement has been modified to the extent it is in conflict with this Act and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) have not all occurred by December 31, 1991, sections 4, 5, 6, 7(b), 7(c), 8, 9(a)(2), 9(a)(3), 9(b), 9(c), 10(a)(1)(c), 10(d), and 11(a), 11(b), 11(c), 11(d), 11(e), and 11(f), and any contracts entered into pursuant to those provisions, shall not thereafter be effective, any funds appropriated pursuant to sections 9(a)(2) and 9(c) shall revert to the Treasury, and any funds appropriated pursuant to paragraph 20.2(b) of the Agreement shall revert to the State of Arizona.

**Sec. 13. [Other claims.]**—Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community. (102 Stat. 2559)

**Sec. 14. [Ak-Chin.]**—(a) The Ak-Chin Indian Community of Arizona may make repayment of the Ak-Chin West supplemental loan by a discounted prepayment in lieu of the repayment terms and provisions contained in section 5(c) of Public Law 89-984, the Small Reclamation Projects Act. The Secretary of the Interior shall determine such amount in a manner that will result in an equitable repayment based on the current applicable interest rate.

(b) The Ak-Chin West supplemental loan is hereby exempt from the 1986 amendments (Public Law 99-546) to the Small Reclamation Projects Act, and the requirement contained in section 4(e) of Small Reclamation Projects Act for a sixty-day congressional review of the approved loan application is hereby waived.

October 20, 1988

3592 SALT RIVER PIMA-MARICOPA WATER RIGHTS

EXPLANATORY NOTES

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

**References in the Text.** The Small Reclamation Projects Act, Act of August 6, 1956 (Public Law 89-984, Ch. 972, 70 Stat. 1044; 43 U.S.C. § 422a, as amended) referenced above appears in Volume I at page 1331. Amendments appear at pages 1348, 1824, 2641, 2932, 3203, and 3345 in Volumes I through IV; pages S268 through S278 in Supplement I; and at page S875 in Supplement II.

The Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3050) referenced above appears in Volume V at page 3515.

**Legislative History.** H.R. 4102, Public Law 100-512 in the 100<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 100-868. Passed the House September 13, 1988. Passed the Senate September 30, 1988, amended. The House concurred in Senate amendment October 3 and 4, 1988.

October 24, 1988

3593

### **MNI WICONI PROJECT ACT OF 1988**

An Act to authorize construction of the Mni Wiconi Rural Water Supply Project, and for other purposes. (Act of October 24, 1988, Public Law 100-516, 102 Stat. 2566; Act of October 31, 1994, Public Law 103-434, 108 Stat. 4526)

**Section 1. [Short title.]**—Sections 1 through 12 of this Act may be cited as the "Mni Wiconi Project Act of 1988".

**Sec. 2. [Findings and purposes.]-(a) [Findings.]**—The Congress finds that—(1) there are insufficient water supplies available to residents of the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation in South Dakota, and the water supplies that are available do not meet minimum health and safety standards, thereby posing a threat to public health and safety;

(2) Shannon County, South Dakota, one of the counties where the Pine Ridge Indian Reservation is located, is the poorest county in the United States, and the lack of water supplies on the Pine Ridge Indian Reservation restricts efforts to promote economic development on the reservation;

(3) the lack of water supplies on the Rosebud Reservation and Lower Brule Reservation restrict efforts to promote economic development on those reservations;

(4) serious problems in water quantity and water quality exist in the rural counties of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota;

(5) the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation; and

(6) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Pine Ridge Indian Reservation, Rosebud Indian Reservation and Lower Brule Indian Reservation, and the residents of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties is the Missouri River.

**(b) [Purpose.]**—The Congress declares that the purposes of sections 1 through 12 are to—

(1) ensure a safe and adequate municipal, rural, and industrial water supply for the residents of the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation in South Dakota;

(2) assist the citizens of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota, to develop safe and adequate municipal, rural, and industrial water supplies;

October 24, 1988

3594

MNI WICONI PROJECT ACT OF 1988

(3) promote the implementation of water conservation programs on the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation and in Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota;

(4) provide certain benefits to fish, wildlife, and the natural environment of South Dakota, including the Pine Ridge Indian Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation; and

(5) repeal the authorization of appropriations for the Pollock-Herreid Unit of the Pick-Sloan Missouri Basin Program. (102 Stat. 2566, 108 stat. 4539)

EXPLANATORY NOTE

**1994 Amendment.** Subsection 803(a) of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4539) amended Subsection 2(a) of this Act (102 Stat. 2566) to read as it appears above: (1) in paragraph (1), by striking "Reservation" and inserting "Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation"; (2) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph: "(3) the lack of water supplies on the Rosebud Reservation and Lower Brule Reservation restrict efforts to promote economic development on those reservations;"; (3) in paragraph (5), as

redesignated by paragraph (2) of this subsection, by striking "Reservation;" and inserting "Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation;"; and (4) in paragraph (6), as redesignated by paragraph (2) of this subsection, by inserting "Rosebud Indian Reservation and Lower Brule Indian Reservation," after "Reservation,".

Subsection 803(b) amended subsection (b) of section 2 (102 Stat. 2566) by inserting ", Rosebud Indian Reservation, and Lower Brule Indian Reservation" after "Reservation" each place it appeared above. Section 803 of the 1994 Act appears in Volume V at page 4026.

**Sec. 3. [Oglala Sioux Rural Water Supply System.]—**

**(a) [Authorization—Highways—Real property—Utilities—Energy.]—**The Secretary of the Interior (hereafter in sections 1 through 12 referred to as the "Secretary") is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Oglala Sioux Rural Water Supply System, as generally described in the report entitled "1988 Planning Report and Environmental Assessment" and dated February 1988, and as more specifically described in the Final Engineering Report dated May, 1993. The Oglala Sioux Rural Water Supply System shall consist of—

(1) pumping and treatment facilities located along the Missouri River near Fort Pierre, South Dakota;

(2) pipelines extending from the Missouri River near Fort Pierre, South Dakota, to the Pine Ridge Indian Reservation;

(3) facilities to allow for interconnections with the West River Rural Water System, Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System, and Lower Brule Sioux Rural Water System;

October 24, 1988

(4) distribution and treatment facilities to serve the needs of the Pine Ridge Indian Reservation, including but not limited to the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents on the Pine Ridge Indian Reservation;

(5) appurtenant buildings and access roads;

(6) necessary property and property rights;

(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary or appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Oglala Sioux Tribe and reservation villages, towns, and municipalities.

**(b) [Agreement with non-Federal entity to plan, construct, operate and maintain the Oglala Sioux Rural Water Supply System.]—**

(1) In carrying out subsection (a), the Secretary, with the concurrence of the Oglala Sioux Tribal Council, shall enter into agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Oglala Sioux Rural Water Supply System.

(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Pine Ridge Indian Reservation.

(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Oglala Sioux Tribe.

(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10 for the Oglala Sioux Rural Water Supply System.

October 24, 1988

3596

MNI WICONI PROJECT ACT OF 1988

**(c) [Service area.]**—The service area of the Oglala Sioux Rural Water Supply System shall be the boundaries of the Pine Ridge Indian Reservation.

**(d) [Construction requirements.]**—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Oglala Sioux Rural Water Supply System shall be planned and constructed to a size sufficient to meet the municipal, rural, and industrial water supply requirements of the Pine Ridge Indian Reservation, the West River Rural Water System, the Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System, and Lower Brule Sioux Rural Water System, taking into account the effects of the conservation plans described in section 5. All five systems may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Oglala Sioux Rural Water Supply System.

**(e) [Title to System.]**—Title to the Oglala Sioux Rural Water Supply System shall be held in trust for the Oglala Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

**(f) [Limitation on availability of construction funds—Reports required.]**—The Secretary shall not obligate funds for the construction of the Oglala Sioux Rural Water Supply System until—

(1) the requirements of the National Environmental Policy Act of 1969 have been met; and

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than ninety days.

(3) Notwithstanding subsections (1) and (2), the Secretary is authorized and directed to obligate up to \$1.466 million of the funds appropriated under Public Law 100-516 to construct an interim water system for the White Clay and Wakpamni Districts of the Pine Ridge Indian Reservation as soon as the final engineering report for that segment of the Oglala Rural Water Supply System has been completed and the requirements of the National Environmental Policy Act of 1969 for that segment of the System have been met.

**(g) [Technical assistance.]**—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Oglala Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Oglala Sioux Rural Water Supply System, including (but not limited to) operation and management training.

**(h) [Application of Indian Self-determination Act.]**—Planning, design construction and operation of the Oglala Sioux Rural Water Supply System within the Pine Ridge Reservation shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638; 25 U.S.C. § 450). (102 Stat. 2567, 106 Stat. 4661)

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3597

EXPLANATORY NOTES

**1994 Amendment.** Subsection 804(a) of the Act of October 31, 1984 (Public Law 103-434, 108 Stat. 4539) amended subsection 3(a) above as follows: (1) in the matter preceding paragraph (1), by striking "1988." and inserting "1988, and as more specifically described in the Final Engineering Report dated May, 1993."; and (2) by amending paragraph (3) to read as follows: "(3) facilities to allow for interconnections with the West River Rural Water System, Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System, and Lower Brule Sioux Rural Water System;".

Subsection 804(b) amended subsection 3(d) of this Act (102 Stat. 2568) as follows: (1) by striking " West River Rural Water System, and the Lyman-Jones Rural Water System, "; and by inserting " West River Rural Water System, the Lyman-Jones Rural Water System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System, "; and (2) by striking "three systems" and inserting "five systems

authorized under this Act".

Subsection 804(c) amended subsection 3(e) of this Act (102 Stat. 2568) by inserting "or encumbered" after "transferred".

Further, section 806 amends this Act by inserting after section 3 "Sec. 3A. Rosebud Sioux Rural Water System "and "Sec. 3B. Lower Brule Sioux Rural Water System." Subsection 804(a) of the 1994 Act appears in Volume V at page 4027.

**1992 Amendment.** Section 1001(b), of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4661) amended section 3(f) above by inserting a new subsection (3) as it appears above. Section 1001 of the 1992 Act appears in Volume V at page 3871.

**Reference in the Text.** The Indian Self-Determination Act of 1975 (Public Law 93-638, 25 U.S.C. § 450) cited in subsections 3(h) above, and 3A(g) and 3B(g) below does not appear herein.

**Sec. 3A. [Rosebud Sioux Rural Water System.]—(a) [Authorization.]—**The Secretary is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural and industrial water system, to be known as the Rosebud Sioux Rural Water System, as generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May, 1993. The Rosebud Sioux Rural Water system shall consist of—

- (1) necessary pumping and treatment facilities;
- (2) pipelines extending from the points of interconnections with the Oglala Sioux Rural Water System to the Rosebud Indian Reservation;
- (3) facilities to allow for interconnections with the Lyman Jones Rural Water Supply System;
- (4) distribution and treatment facilities to serve the needs of the Rosebud Indian Reservation, and other areas described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, including (but not limited to) the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents of the Rosebud Indian Reservation;
- (5) appurtenant buildings and property rights;
- (6) necessary property and property rights;

October 24, 1988

3598

MNI WICONI PROJECT ACT OF 1988

(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary and appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Rosebud Sioux Tribe and reservation villages, towns, and municipalities.

**(b) [Agreement with non-Federal entity to plan, design, construct, operate and maintain the Rosebud Sioux Rural Water Supply System.]—**

(1) In carrying out subsection (a), the Secretary, with the concurrence of the Rosebud Sioux Tribal Council, shall enter into cooperative agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Rosebud Sioux Rural Water System.

(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Rosebud Indian Reservation.

(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Rosebud Sioux Tribe.

(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10(a) for the Rosebud Sioux Rural Water System.

**(c) [Service area.]—**The service area of the Rosebud Sioux Rural Water System shall extend to all of Todd County, South Dakota, and to all other territory and lands generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993 and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May 1993.

October 24, 1988

**(d) [Construction requirements.]**—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Rosebud Sioux Rural Water System shall be planned and constructed to a size sufficient to meet the municipal, rural and industrial water supply requirements of the Rosebud Sioux Tribe and the Lyman-Jones Rural Water System, as generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May, 1993, taking into account the effects of the conservation plans described in section 5. The Rosebud Rural Water System and Lyman-Jones Rural Water System may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Rosebud Sioux Rural Water System.

**(e) [Title to System.]**—Title to the Rosebud Sioux Rural Water System shall be held in trust for the Rosebud Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

**(f) [Technical assistance.]**—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Rosebud Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Rosebud Sioux Rural Water System, including (but not limited to) operation and management training.

**(g) [Application of the Indian Self-Determination Act.]**—Planning, design, construction, and operation of the Rosebud Sioux Rural Water System shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638, 25 U.S.C. 450). (108 Stat. 4541-4543)

**Sec. 3B. [Lower Brule Sioux Rural Water System.]—(a) [Authorization.]**—The Secretary is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Lower Brule Sioux Rural Water System, as generally described in the Final Engineering Report for the Mni Wiconi Rural Water Supply Project, dated May 1993. The Lower Brule Sioux Rural Water System shall consist of—

- (1) necessary pumping and treatment facilities;
- (2) pipelines extending from the points of interconnections with the Oglala Sioux Rural Water Supply System to the Lower Brule Indian Reservation;
- (3) facilities to allow for interconnections with the Lyman-Jones Rural Water Supply System;
- (4) distribution and treatment facilities to serve the needs of the Lower Brule Indian Reservation, including (but not limited to) the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents of the Lower Brule Indian Reservation;
- (5) appurtenant buildings and property rights;
- (6) necessary property and property rights;

(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary and appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Lower Brule Sioux Tribe and reservation villages, towns and municipalities.

**(b) [Cooperative agreements required.]**—Agreement with non-Federal entity to plan, design, construct, operate and maintain the Lower Brule Sioux Rural Water Supply System.

(1) In carrying out subsection (a), the Secretary, with the concurrence of the Lower Brule Sioux Tribal Council, shall enter into cooperative agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Lower Brule Sioux Rural Water System.

(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Lower Brule Indian Reservation.

(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Lower Brule Sioux Tribe.

(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10(a) for the Lower Brule Sioux Rural Water System.

**(c) [Service area.]**—The service area of the Lower Brule Sioux Rural Water System shall be the boundaries of the Lower Brule Indian Reservation.

**(d) [Construction requirements.]**—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Lower Brule Sioux Rural Water System shall be planned and constructed to a size sufficient to meet the

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3601

municipal, rural, and industrial water supply requirements of the Lower Brule Sioux Tribe and the Lyman-Jones Rural Water System, as generally described in the Final Engineering Report of the Mni Wiconi Rural Water Supply Project, dated May 1993, taking into account the effects of the conservation plans described in section 5. The Lower Brule Sioux Rural Water System and Lyman-Jones Rural Water System may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Lower Brule Sioux Rural Water System.

**(e) [Title to System.]**—Title to the Lower Brule Sioux Rural Water System shall be held in trust for the Lower Brule Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

**(f) [Technical assistance.]**—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Lower Brule Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Lower Brule Sioux Rural Water System, including (but not limited to) operation and management training.

**(g) [Application of the Indian Self-Determination Act.]**—Planning, design, construction, and operation of the Lower Brule Sioux Rural Water System shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638, 25 U.S.C. 450). (108 Stat. 4542)

**Sec. 4. [West River Rural Water System and Lyman-Jones Rural Water System.]—(a) [Planning and construction—Contracts required.]—**

(1) The Secretary is authorized and directed to enter into cooperative agreements with appropriate non-Federal entities to provide Federal funds for the planning and construction of the West River Rural Water System and the Lyman-Jones Rural Water System in Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota, as described in the report entitled "1988 Planning Report and Environmental Assessment" and dated February 1988.

(2) The Secretary may not provide more than 80 per centum of the total cost of—

(A) the West River Rural Water System, and

(B) the Lyman-Jones Rural Water System. Such Federal funds may be obligated and expended only through cooperative agreements described in subsection (b).

(3) The non-Federal share of the costs allocated to the West River and Lyman-Jones Rural Water Systems shall be 20 per centum.

EXPLANATORY NOTE

**1994 Amendments.** Subsection 805 of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4539) amended section 4(a) above as follows: (1) in paragraph (2), by striking out "65 per centum" and inserting in lieu thereof "80

percent"; and (2) in paragraph (3), by striking out "35 per centum " and inserting in lieu thereof "20 percent". The 1994 Act appears in Volume V at page 4027.

Subsection 807(a) of the 1994 Act amended

October 24, 1988

3602

MNI WICONI PROJECT ACT OF 1988

subsection 4(d) (102 Stat. 2569) below by striking the period at the end thereof and inserting ", and Final Engineering Report dated May 1993.". Further, subsection 807(b) amended section 4 of this Act (102 Stat. 2568) by redesignating subsection (f) as subsection (g) and inserting after subsection (e) a new subsection (f) as it appears below. Section 807 of the 1994 Act appears in Volume V at page 4031.

**(b) [Cooperative agreements.]**—(1) The Secretary, with the concurrence of the Lyman-Jones and West River Rural Water Systems, shall execute cooperative agreements with the appropriate non-Federal entities to provide Federal assistance for the planning, design, and construction of the West River Rural Water System and the Lyman-Jones Rural Water System. Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

**(c) [Facilities on which Federal funds may be expended—Highways—Real property—Utilities—Energy.]**—The facilities on which Federal funds may be obligated and expended under this section shall include—

(1) water intake, pumping, treatment, storage, interconnection, and pipeline facilities;

(2) appurtenant buildings and access roads;

(3) necessary property and property rights;

(4) electrical power transmission and distribution facilities necessary for service to water system facilities;

(5) planning and design services for all facilities; and

(6) other facilities and services customary to the development of rural water distribution systems in South Dakota.

**(d) [Service area.]**—The service area of the West River Rural Water System and the Lyman-Jones Rural Water System shall be as described in the engineering study entitled "1988 Planning Report and Environmental Assessment" and dated February 1988, and Final Engineering Report dated May 1993.

**(e) [Limitation on availability of construction funds—Reports required.]**—The Secretary shall not obligate funds for the construction of the West River Rural Water System and the Lyman-Jones Rural Water System until—

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3603

(1) the requirements of the National Environmental Policy Act of 1969 have been met; and

(2) final engineering reports have been prepared and submitted to the Congress for a period of not less than ninety days.

**(f) [Interconnection of facilities and waiver of charges.]**—The Secretary is authorized to interconnect the Lyman-Jones Rural Water System, and the West River Rural Water System, with each of the other systems authorized under this Act, and to provide for the delivery of water to the West River Rural Water System, and Lyman-Jones Rural Water System, without charge or cost, from the Missouri River and through common facilities of the Oglala Sioux Rural Water Supply System, Rosebud Rural Water System and Lower Brule Rural Water System.

**(g) [Prohibitions on use of Federal funds.]**—The Secretary may not obligate or expend any Federal funds for the operation, maintenance, or replacement of either the West River or Lyman-Jones Rural Water System. (102 Stat. 2568, 108 Stat. 4543)

**Sec. 5. [Water conservation—Public notice required.]**—In order to reduce costs to consumers and to reduce water consumption, the Secretary, prior to obligating any construction funds, shall issue a public notice finding that plans for the rural water systems include prudent and responsible water conservation measures for the operation of such systems where such measures are shown to be economically and financially feasible. Each non-Federal party (including the Oglala Sioux Tribe, Rosebud Sioux Tribe, and Lower Brule Sioux Tribe) participating in the systems shall develop a water conservation plan containing definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives. The provisions of section 210(c) of Public Law 97-293 (96 Stat. 1268) shall apply with respect to the systems. (102 Stat. 2570)

EXPLANATORY NOTES

**1994 Amendments.** Section 808 of the Act of October 31, 1984 (Public Law 103-434, 108 Stat. 4544) amended section 5 above by striking "The non-Federal parties (including the Oglala Sioux Tribe)" and inserting "Each non-Federal party (including the Oglala Sioux Tribe, Rosebud Sioux Tribe, and Lower Brule Sioux Tribe)".

Section 809 of the 1994 Act amended section 6 below, as follows: (1) in subsection (a)—

(A) by inserting ", Rosebud Sioux Rural Water Supply System, Lower Brule Sioux Rural Water Supply System," after "Supply System"; and

(B) by inserting "Rosebud Sioux Rural

Water Supply System, Lower Brule Sioux Rural Water Supply System, after "Supply System,"; and

(2) in subsection (b)—

(A) by inserting ", all Indian tribes residing on reservations within the State of South Dakota," after "South Dakota";

(B) by inserting "and terrestrial" after "wildlife";

(C) by striking "Such plans" and inserting "Such recommendations"; and

(D) by adding at the end the following: "The Indian tribes shall be afforded an opportunity to review and concur within any recommendations affecting their

October 24, 1988

3604

MNI WICONI PROJECT ACT OF 1988

reservations before they are submitted to Congress." Public Law 97-293, the Act of October 12, 1982 (96 Stat. 1268) cited in section 5 above appears in Volume IV on page 3341 and as currently amended in Supplement II at page S1099.

Section 808 of the 1994 Act appears in Volume V at page 4032.

**Reference in the Text.** Section 210(c) of

**Sec. 6. [Mitigation of fish and wildlife Losses.]—(a) [Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System, Lower Brule Sioux Rural Water Supply System, and the West River and the Lyman-Jones Rural Water Systems.]—**Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System, Lower Brule Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

**(b) [Oahe And Big Bend Dams And Reservoirs.]—**The Secretary, in cooperation with the State of South Dakota, all Indian tribes residing on reservations within the State of South Dakota, and other Federal agencies, shall develop and submit recommendations to the Congress for financing and implementing mitigation plans for fish and wildlife and terrestrial losses incurred as a result of the construction and operation of the Oahe Dam Reservoir and Big Bend Dam and Reservoir. Such recommendations shall incorporate the proposal of the United States Army Chief of Engineers as outlined in Design Memorandum M (Gen)-19 of December 1987 for improved management of existing Federal lands, and purchase of single-purpose mitigation lands, such as the Olson and Mudon Ranches, from willing sellers. The Indian tribes shall be afforded an opportunity to review and concur within any recommendations affecting their reservations before they are submitted to Congress. (102 Stat. 2570, 108 Stat. 4544)

**Sec. 7. [Prohibition on use of funds for irrigation purposes.]—**None of the funds made available to the Secretary for planning or construction of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Rural Water Supply System, the West River Rural Water System, or the Lyman-Jones Rural Water System may be used to plan or construct facilities used to supply water for the purpose of irrigation.

EXPLANATORY NOTE

**1994 Amendments.** Section 810 of the Act of October 31, 1984 (Public Law 103-434, 108 Stat. 4544) amended section 7 above by striking "Supply System," and inserting "Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Rural Water Supply System,"

Section 811 of the 1994 Act amended section

8 below as follows: (1) by inserting ", Rosebud Sioux Tribe, and Lower Brule Sioux Tribe" after "Tribe"; and (2) by striking "or construct" and inserting "construct, maintain, or replace". Sections 810 and 811 of the 1994 Act appear in Volume V at page 4032.

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3605

**Sec. 8. [Rule of construction.]**—Nothing in sections 1 through 12 is intended, nor shall be construed, to preclude the State of South Dakota or the Oglala Sioux Tribe, Rosebud Sioux Tribe, and Lower Brule Sioux Tribe from seeking congressional authorization to plan, design, operate, construct, maintain, or replace additional federally assisted water resource development projects.

**Sec. 9. [Use of Pick-Sloan power.]—(a) [In general.]**—The Systems authorized by sections 3, 3A, 3B, and 4 of this Act shall utilize power from Pick-Sloan for their operation. This power shall be deemed to be a project use pumping requirement of Pick-Sloan.

**(b) [Power to be used.]**—As of the date of enactment of this Act, power identified for future project use pumping at the Pollock Herreid Unit of the Pick-Sloan shall be reserved for and utilized by the Systems and made available for the purpose authorized by subsection (a).

**(c) [Rate.]**—The rate for project use power made available pursuant to subsection (a) shall be the wholesale firm power rate for Pick-Sloan (Eastern Division) in effect at the time the power is sold.

**(d) [Additional power.]**—If additional power beyond that made available through subsection (b) is required to meet the pumping requirements of the Systems, the Administrator of the Western Area Power Administration is authorized to purchase the additional power needed under such terms and conditions the Administrator deems appropriate. Expenses associated with such power purchases shall be recovered through a separate power charge, sufficient to recover these expenses, applied to the Systems.

**(e) [Definitions.]**—For purposes of this section—

(1) the term "Systems" means the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System; and

(2) the term "Pick-Sloan" means the Pick-Sloan Missouri Basin Program authorized by section 9 of the Act of December 22, 1944 (58 Stat. 891; commonly referred to as the Flood Control Act of 1944). (102 Stat. 2570)

EXPLANATORY NOTES

**1994 Amendments.** Subsection 812(a) of the Act of October 31, 1984 (Public Law 103-434, 108 Stat. 4544) amended section 9 above by striking "sections 3" and inserting "sections 3, 3A, 3B,". Subsection 812(b) of the 1994 Act amended section 9(e)(1) by striking "Supply System," and inserting "Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System,".

Section 813 of the 1994 Act (108 Stat. 4545) amended section 10 to read as it appears below. Sections 812 and 813 of the 1994 Act appear in Volume V at pages 4032 and 4033.

**Reference in the Text.** Section 9 of the Act of December 22, 1944 (ch. 665, 58 Stat. 891) cited in section 9(e) above appears in Volume II at page 806. Annotations and amendments appear in Supplement I at page S147 and Supplement II at page S861.

October 24, 1988

3606

MNI WICONI PROJECT ACT OF 1988

**Sec. 10. [Authorization of appropriations.]—(a) [Planning, design, and construction.]**—There are authorized to be appropriated \$263,241,000 for the planning, design, and construction of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System, the West River Rural Water Supply System, and the Lyman-Jones Rural Water Supply System described in sections 3, 3A, 3B, and 4. Such funds are authorized to be appropriated only through the end of the year 2003. The funds authorized to be appropriated by the first sentence of this section, less any amounts previously obligated for the Systems, may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after October 1, 1992, as indicated by engineering costs indices applicable for the type of construction involved.

**(b) [Operation and maintenance of Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System and Lower Brule Sioux Rural Water Supply System.]**—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of the Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System and Lower Brule Sioux Rural Water Supply System. The operation and maintenance expenses associated with water deliveries to the West River and Lyman-Jones Rural Water Systems are a non-Federal responsibility and for such deliveries the Secretary shall enter into a contract with the West River and Lyman-Jones Systems for the payment of an annual operation and maintenance fee. Such fee shall be based on the incremental operation and maintenance costs for water actually delivered each year to the West River and Lyman-Jones Rural Water Systems. Such operation and maintenance payments shall be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations as indicated by indices applicable to comparable regional rural water supply systems for the type of operation and maintenance involved.

**(c) [Waste Water Disposal Systems Feasibility Studies.]**—There is authorized to be appropriated such sums as may be necessary to complete the feasibility studies authorized by section 15(c). (102 Stat. 2571, 108 Stat. 4545)

**Sec. 11. [Water rights.]**—Nothing in sections 1 through 12 shall be construed to—

- (1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;
- (2) alter the rights of any State to any appropriated share of the waters of any body or [sic] surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;
- (3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;
- (4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or
- (5) affect any rights, benefits, privileges or claims, including water rights or

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3607

claims thereto of the Oglala Sioux Tribe, Rosebud Sioux Tribe and Lower Brule Sioux Tribe, whether located within or without the external boundaries of their respective reservations, based on treaty, Executive order, agreement, Act of Congress, aboriginal title, the Winter's doctrine (Winter's v. United States, 207 U.S. 564 (1908)), or otherwise. Nothing contained in this section or in section 1 through 12, however, is intended to validate or invalidate any assertion of the existence, nonexistence or extinguishment of any water rights, or claims thereto, held by the Oglala Sioux Tribe, Rosebud Sioux Tribe, Lower Brule Sioux Tribe, or any other Indian tribe or individual Indian under Federal or State law. (102 Stat. 2571, 108 Stat. 4545)

EXPLANATORY NOTES

**1994 Amendments.** Section 814 of the Act of October 31, 1984 (Public Law 103-434, 108 Stat. 4544) amended paragraph (5) of section 11 above as follows:

- (1) by inserting "rights, benefits, privileges or claims, including" after "affect any";
- (2) by inserting "Rosebud Sioux Tribe and Lower Brule Sioux Tribe," after "Tribe," the first place it appears;
- (3) by striking "the Pine Ridge Indian Reservation " and inserting "their respective reservations"; and

(4) by striking "Tribe," the second place it appears and inserting "Tribe, Rosebud Sioux Tribe, Lower Brule Sioux Tribe,".

Section 814 of the 1994 Act appears in Volume V at page 4033.

**References in the Text.** Notes of opinion on the application of the "Winter's Doctrine" from *Winters v. United States* 207 U.S. 564 (1908) cited in section 11(5) above appear on pages 4, 427, and S2 herein.

**Sec. 12. [Repeal of authorization of appropriations.]—**

**(a) [Pollock-Herreid Unit.]—**Section 407 of the Reclamation Authorization Act of 1975 (Public Law 94-228; 90 Stat. 209) relating to the authorization of appropriations for the Pollock-Herreid Unit of the Pick-Sloan Missouri Basin Program is hereby repealed. The Pollock-Herreid Unit shall remain an authorized feature of the Pick-Sloan Missouri Basin Program.

**(b) [Feasibility studies.]—**Delete section 3 of Public Law 97-273 (96 Stat. 1181) and substitute in lieu thereof the following:

"Sec. 3. The Secretary is authorized, in cooperation with the State of South Dakota, to conduct a feasibility investigation of the alternate uses of facilities constructed for use in conjunction with the Oahe Unit, initial stage, James Division, Pick-Sloan Missouri Basin Program, South Dakota, and to report to the Congress the findings of such study along with his recommendations."

October 24, 1988

3608

MNI WICONI PROJECT ACT OF 1988

EXPLANATORY NOTES

**1994 Amendment.** Section 815 of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4526) further amended section 3 of Public Law 97-273 (96 Stat. 1181) by striking "Dakota," and inserting "Dakota and all Indian tribes residing on reservations within the State of South Dakota,". Section 815 of the 1994 Act appears in Volume V at page 4034.

**References in the Text.** Section 407 of the Reclamation Authorization Act of 1975, Act of

March 11, 1976 (Public Law 94-228; 90 Stat. 209) cited in subsection 12(a) appears in Volume IV at page 2934 and in Supplement II at page S1054.

Section 3 of Public Law 97-273, Act of September 30, 1982 (96 Stat. 1181) cited in subsection 12(b) appears in Volume IV at page 3327. The 1982 Act, as amended, also appears in Supplement II at page S1087.

**(c) [Waste water disposal systems.]**—(1) The Secretary is authorized and directed, in consultation with the Oglala Sioux Tribe, Rosebud Sioux Tribe and Lower Brule Sioux Tribe, to conduct feasibility studies on the need to develop waste water disposal facilities and systems, and rehabilitate existing waste water disposal facilities and systems, on the Pine Ridge Indian Reservation, Rosebud Indian Reservation and Lower Brule Indian Reservation, and to report to the Congress the findings of such studies along with his recommendations.

(2) The feasibility studies authorized under this subsection shall be completed and presented to Congress within one year after the date that funds are first made available by the Secretary to complete the studies. (102 Stat. 2572, 108 Stat. 4546)

**Sec. 13. [Grand Valley Project, Colorado.]**—The Secretary of the Interior is authorized to extend the Grand Valley Project Contract Numbered 6-07-40-POO80, dated April 10, 1986, among the United States, the Grand Valley Water Users Association, Public Service Company of Colorado, and the Orchard Mesa Irrigation District, for a period not to exceed two years to provide for the continued operation of the Grand Valley Power Project.

**Sec. 14. [Veteran, Wyoming—Town site.]—(a) [Public lands.]**—Notwithstanding any law or court order to the contrary, the Secretary of the Interior shall amend, subject to valid existing rights, the official subdivision survey and plat for the town site of Veteran, Wyoming, to take into account the actual and common use of streets and alleys on such lands for designation as public reservations in accordance with the Act of April 16, 1906 (34 Stat. 116, as amended).

**(b) [Land patented to Goshen County Unified School District Number One.]**—After completion of the work required to amend the town site survey and plat, the title of the United States in and to the public reservation lands shall be patented to Goshen County, Wyoming. Title of the United States in and to a 90 feet by 75 feet lot of approximately 0.15 acres which is described in the records of the Goshen County, Wyoming, clerk's office as "a tract in south west corner

October 24, 1988

of town of Veteran, Block 40 in the original town of Veteran," shall be patented to Goshen County Unified School District Number One.

**(c) [Disposal of Public Lands.]**—The Secretary is authorized to dispose of Federal lands within the town site area by negotiated sale at fair market value or by public sale. (102 Stat. 2572)

EXPLANATORY NOTE

**Reference in the Text.** The Act of April 16, in subsection 14(a) above appears in Volume I 1906 (ch. 1631, 34 Stat. 116, as amended) cited on page 109.

**Sec. 15. [Contracts with the Redwood Valley County Water District, California.]—(a) [Renegotiation of contracts.]—**

(1) Notwithstanding any other provision of law, the Secretary of the Interior shall renegotiate the schedules of payment for the loans to the Redwood Valley County Water District which are numbered 14-06-200-8423A and 14-06200-8423A Amendatory.

(2) Such renegotiated schedules of payment may not take effect until October 1, 1989.

**(b) [Loans.]**—The obligation to repay amounts loaned to the Redwood Valley County Water District, California, pursuant to the original negotiated schedule of payment of a loan specified in subsection (a) is suspended until the renegotiated schedule of payment for that loan takes effect. Any obligation to repay amounts under any such loan which is due, but not paid as of the date of enactment of this Act, is suspended. The renegotiated schedules of payment referred to in subsection (a) shall take into account any obligation suspended by this subsection.

**(c) [Interest charges.]**—No interest may be charged on any payment under either of the loans specified in subsection (a) which is due but not paid before the renegotiated schedule of payment for such loan takes effect.

**Sec. 16. [Water purchase by Lakeview Irrigation District, Wyoming.]—(a) [Option to purchase water.]**—The Secretary of the Interior is hereby authorized and directed to offer annually to the Lakeview Irrigation District, Wyoming, an option to purchase up to 15,000 acre-feet of storage in the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming, of which 3,200 acre-feet shall be a firm water supply and the remainder shall be available as needed pending completion of the Polecat Bench Reclamation Project.

**(b) [Exercise of option.]**—The Lakeview Irrigation District may exercise its purchase option only in those water years when there is insufficient yield for the District only after the primary flow rights of the Shoshone Project have been satisfied. Any water purchased by the district pursuant to this section shall be

October 24, 1988

3610

MNI WICONI PROJECT ACT OF 1988

provided through exchange by the Bureau of Reclamation in return for the district's right to continue upstream withdrawals of Shoshone Project water.

**(c) [Waiver of certain contract requirements.]**—The Secretary of the Interior is authorized and directed to waive land classification and related study requirements in connection with any contract entered into pursuant to this section.

**(d) [Laws of State of Wyoming.]**—Any allocation or reallocation from existing uses of water stored in the Buffalo Bill Dam and Reservoir resulting from this section shall be pursuant to the laws of the State of Wyoming.

**Sec. 17. [Navy land, California.]**—Section 2 of the Act entitled "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", approved August 10, 1972 (86 Stat. 380), is amended by inserting: "Proceeds from the leases in excess of these needs and from lease parcels not within Westlands Water District may be utilized by the Secretary of the Navy to acquire easements in Kings County, California." after "are fully paid.". (102 Stat. 2573)

EXPLANATORY NOTE

**Reference in the Text.** The Act of August 10, 1972 (86 Stat. 380) cited in section 17 above does not appear herein.

**Sec. 18. [Energy purchase from Shoshone Irrigation District, Wyoming.]**—**(a) [Extension.]**—The Secretary of Energy, acting through the Western Area Power Administration, is directed to offer an extension of the energy purchase provisions of article 9 of the contract numbered 2-07-70-PO287 and dated March 15, 1982, to the Shoshone Irrigation District, an irrigation district and municipal corporation organized under the laws of the State of Wyoming. Such extension, if accepted, shall take effect as of April 15, 1988, shall remain in force and effect for a period of five years thereafter, and shall be subject to all of the original conditions, terms, and rates specified in such contract. At the end of the five-year extension, purchases of electric energy under article 9 of such contract may be extended by mutual agreement between the Western Area Power Administration and the Shoshone Irrigation District for successive one-year intervals at rates for purchase which may not be less than the rates specified in article 9.

**(b) [Limitation.]**—In no event shall sales of electric energy to the United States pursuant to subsection (a) be made after September 30, 1999.

**Sec. 19. [Colorado Coastal Plains Project, Texas, Shaws Bend Damsite.]**—**(a) [Findings.]**—The Congress finds that (1) there have been five studies of the Shaws Bend site of the Colorado Coastal Plains project, authorized as part of the study for the Texas Basins project under the Act entitled "An Act to authorize the Secretary of the Interior to engage in feasibility investigations of

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3611

certain water resource development proposals", approved September 7, 1966 (80 Stat. 707), and(2) there is no need for the construction of a dam at the Shaws Bend site.

**(b) [Prohibition on appropriations.]**—Notwithstanding the first section of such Act and effective after the date of enactment of this Act, no funds may be appropriated for the analysis and study of the Shaws Bend site of the Colorado Coastal Plains project, authorized as part of the study for the Texas Basin project.

**Sec. 20. [Franklin County, Washington—Roads Study.]**—(a) For the purposes of taking actions necessary to protect the county road system in irrigated portions of Franklin County, Washington, within the Federal Columbia Basin reclamation project and which are underlain or adjacent to lands underlain by the unique geological setting identified as the Ringold Formation, the Secretary of the Interior is directed to investigate road instability problems caused by high water tables and landslides, to design corrective actions, and to make recommendations for action.

(b) Funds not to exceed \$500,000 are authorized to be appropriated for the investigations directed in subsection (a) of this section, which shall be nonreimbursable, and the Secretary shall submit a report of his findings and recommendations for corrective action to the President and the Congress within three years after the date of enactment of this Act and availability of funds.

**Sec. 21. [Distribution system contracts.]**—To expedite completion of construction of the irrigation distribution systems of the Maricopa-Stanfield and Central Arizona Irrigation and Drainage Districts, Central Arizona Project, pursuant to Contract Numbered 4-07-30-WO047, as supplemented, and Contract Numbered 4-07-30-WO048, as supplemented, the sixty-day congressional review period provided for in the Act of June 13, 1956 (70 Stat. 274) is hereby waived. (102 Stat. 2574)

EXPLANATORY NOTE

**References in the Text.** The Act of September 7, 1966 (Public Law 89-561, 80 Stat. 707) cited in subsection 19(a) above appears in Volume III at page 1886 and in Supplement I at page S418. The Act of June 13, 1956 (ch. 382, 70 Stat. 274) cited in section 21 above appears in Volume II at page 1269.

**Sec. 22. [Closed Basin Project amendments.]**—The Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964), as amended by the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505), and by the Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941), is further amended as follows:

(1) Section 101(a) is amended by striking the phrase "including channel rectification of the Rio Grande between the uppermost point of discharge into the river of water 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

October 24, 1988

3612

MNI WICONI PROJECT ACT OF 1988

surrounding lands, to minimize losses of waters through evaporation, transpiration, and seepage, and to provide a conduit for the reception of water salvaged by drainage projects undertaken in the San Luis Valley below Alamosa, Colorado,".

(2) Section 101(c) is amended by striking the phrase "Water Quality Act of 1965 (79 Stat. 903)" and inserting in lieu thereof the phrase "Clean Water Act (Public Law 92-500), as amended.".

(3) Section 102(a) is amended by striking the phrase "except channel rectification,".

(4) Section 102 is amended by adding a new subsection (e) at the end thereof to read as follows:

"(c) The Secretary is authorized to acquire water pursuant to the procedural and substantive laws of the State of Colorado from within the Rio Grande Basin in the State of Colorado by purchase, lease, or exchange from willing sellers for the purposes of this Act, provided that—

"(1) such water is obtained, made available, and delivered for project purposes at less cost for operation and maintenance than the same amounts of water can be made available by operation of project pumping facilities and without necessitating the construction of additional physical facilities by the Secretary;

"(2) such water may be used in lieu of water pumped from the project only if the Secretary has complied with all Federal, State, and local laws, rules, and regulations which apply to such water or the facilities other than those of the project which develop such water;

"(3) such water is subject to all of the limitations, conditions, and requirements of this Act to the same extent and in the same manner as water pumped by the project; and

"(4) this authorization shall not entitle the Secretary to obtain such water or any water rights by condemnation or by exercising the power of eminent domain.".

(5) Section 104(b)(2) is amended by adding a new sentence at the end thereof to read as follows: "The Secretary is authorized to negotiate and enter into an agreement with the Rio Grande Water Conservation District which provides for the temporary delivery of project salvaged water to the refuge and the habitat area in those years in which there is not sufficient water to fully satisfy the purposes of both paragraphs (1) and (2) of this subsection.".

(6) Section 104(b)(4) is amended to read as follows:

"(4) For irrigation or other beneficial uses in Colorado: *Provided*, That no water shall be delivered until contracts between the United States and water users in Colorado, or the Rio Grande Water Conservation District acting for them, have been executed providing for the repayment of such construction costs as in the opinion of the Secretary are appropriate and within the ability

October 24, 1988

MNI WICONI PROJECT ACT OF 1988

3613

of the users to pay and for the payment of all of the costs of operation and maintenance which are allocable to the production of this priority 4 water."

(7) Section 109 is amended to read as follows:

"Sec. 109. There is hereby authorized to be appropriated the sum of \$94,000,000 (October 1988 prices) for the construction of the Closed Basin Division of the San Luis Valley project, of which amount not more than \$31,000,000 may be adjusted plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein, and such additional sums for the operation and maintenance of the project as may be required: *Provided*, That none of the funds authorized herein for construction in excess of \$75,000,000 may be expended by the Secretary unless and until the State of Colorado or a political subdivision thereof has entered into a binding agreement with the Secretary to contribute during construction one-third of the costs of construction in excess of \$75,000,000, or \$6,000,000, whichever is less. Such agreement shall include a reasonable limitation on administrative overhead expenses charged by the Secretary." (102 Stat. 2575)

EXPLANATORY NOTE

**Reference in the Text.** The Reclamation Project Authorization Act of 1972, Act of October 20, 1972 (Public Law 92-514, 86 Stat. 964), as amended by the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505) appears in Volume IV at page 2748. Extracts from the 1972 Act as amended by the Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941) and section 22 of this Act appear in Supplement II at page S1030.

**Sec. 23. [Bessemer Ditch, Colorado.]**—The Act of July 9, 1980 (Public Law 96-309, 94 Stat. 940), is amended by adding a section 4 as follows:

"Sec. 4. The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of \$1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: *Provided*, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total cost of the design and construction of such additional lining. The non-Federal contribution may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the construction at cost of the additional gunite lining authorized by this section." (102 Stat. 2577)

October 24, 1988

3614

MNI WICONI PROJECT ACT OF 1988

EXPLANATORY NOTES

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

**Reference in the Text.** The Act of July 9, 1980 (Public Law 96-309, 94 Stat. 940) cited in section 23 above appears in Volume IV at page 3197 and in Supplement II at page S1083.

**Legislative History.** H.R. 2772, Public Law 100-516 in the 100<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R.

Repts. No. 100-733. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 100-490. Considered and passed House June 27, 28, 1988. Considered and passed Senate, amended September 8, 1988. House disagreed with certain Senate amendments and concurred in another with an amendment October 3-4, 1988. Senate concurred in House amendment October 7, 1988.

October 28, 1988

3615

**SALT RIVER PIMA-MARICOPA INDIAN RESERVATION  
LAND ADDITION ACT**

An act to add additional land to the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes. (Act of October 28, 1988, Public Law 100-544, 102 Stat. 2724)

**[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) the use of lands within the Salt River Pima-Maricopa Indian Reservation will be lost to the community through location of a regional freeway if an agreement is reached between the State of Arizona and the Salt River Pima-Maricopa Indian community; and

(3) the State of Arizona will compensate the Bureau of Land Management for land described in section 2 with lands of approximately equivalent value.

(b) The Congress hereby declares that it is the policy of the Congress to expedite these land exchanges and upon transfer of title from the State of Arizona to the Salt River Pima-Maricopa Indian community add this additional land to the Salt River Pima-Maricopa Indian Reservation.

**Sec. 2. [Authorization for exchange.]**—The Secretary of the Interior is authorized and directed to exchange a tract of land known as Red Mountain located in section 24, township 2 north, range 6 east, Gila and Salt River meridian.

**Sec. 3. [Revocation of Reclamation withdrawals.]**—(a) Notwithstanding any other provision of law, in order to facilitate the transfer of certain Federal lands:

(1) Secretarial orders dated July 2, 1902, and February 10, 1906, which withdraw lands in aid of the Salt River project, are hereby revoked on the following described lands: Lots 7, 9, 11, 13 through 15, and 17 through 29 of section 24, township 2 north, range 6 east, Gila and Salt River meridian. The effective date of the revocation shall be the date of patent.

(b) Reserving to the Salt River project an easement for electric transmission and distribution lines and access purposes as to a portion of the east half of section 24, township 2 north, range 6 east of the Gila and Salt River meridian, Maricopa County, Arizona, as authorized by virtue of this Act.

Said easement being that portion of the east 300.0 feet of said section 24 lying west of a line extending northerly from a point on the south section line of said section 24 being 51.0 feet west of the southeast corner of said section 24 to a point on the north section line of said section 24 being 129.0 feet west of the northeast corner of said section 24 as hereby referenced and depicted on drawing C-675-439.90. Said easement establishes a priority right of the Salt

3616 SALT RIVER PIMA-MARICOPA LAND ADDITION

River Project to the Bureau of Land Management Right of Way Number A.R. 020234.

(c) The United States of America and the Salt River project shall not be liable whatsoever for damages to any lands revoked under section 3(1) of this Act which may be caused by flooding in conjunction with any of the United States or Salt River project existing or future facilities or protective works.

(d) Any future patentee, its heirs, executors, administrators, successors, and assigns shall be held liable to the United States or the Salt River project for damages caused by their activities which alter drainage and adversely affect adjacent lands, project facilities, or protective works of the United States or Salt River project.

(e) Reserving to the United States a right of way for road purposes, as described in the Bureau of Land Management A.R. 020234. (102 Stat. 2724)

**Sec. 4. [Addition of lands to the Salt River Pima-Maricopa Indian Reservation.]**—The boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, created by Executive order issued on June 14, 1879, as amended, shall be modified in accordance with the provisions of section 5 of this Act at such time as the reservation acquires title to the lands. Any portion of such boundary established by this Act shall be fixed and permanent and not ambulatory. (102 Stat. 2725)

**Sec. 5. [Reservation lands.]**—(a) Upon acquisition by the Salt River Pima-Maricopa Indian Community the following lands containing approximately 594 acres lying southerly of the present reservation shall be added to the reservation:

(1) That portion of section 23, township 2 north, range 6 east, Gila and Salt River meridian, Maricopa County, Arizona, described as follows:

Beginning at a witness point on the east line of said section 23, which is south 2 degrees 15 minutes west, 9.58 chains distance from the northeast corner of said section, said point being on the southerly right of way of the Southern Canal as shown on the official Bureau of Land Management plat of the metes-and-bounds survey in section 23, accepted September 26, 1983.

Thence by metes-and-bounds along the southerly right of way of the Southern Canal as shown of said plat,

- south 55 degrees 56 minutes west, 3.31 chains, to AP 1;
- south 61 degrees 16 minutes west, 4.875 chains, to AP 2;
- south 69 degrees 42 minutes west, 3.695 chains, to AP 3;
- south 75 degrees 02 minutes west, 4.095 chains, to AP 4;
- south 57 degrees 16 minutes west, 3.235 chains, to AP 5;
- south 68 degrees 03 minutes west, 9.22 chains, to AP 6;
- south 76 degrees 29 minutes west, 8.265 chains, to AP 7;
- south 65 degrees 41 minutes west, 6.30 chains, to AP 8;
- south 59 degrees 46 minutes west, 2.815 chains, to AP 9;
- south 45 degrees 35 minutes west, 29.64 chains, to AP 10;

October 28, 1988

SALT RIVER PIMA-MARICOPA LAND ADDITION 3617

south 28 degrees 23 minutes west, 18.72 chains, to AP 11;  
south 41 degrees 06 minutes west, 88.44 feet to a point;

Thence leave the southerly right of way of the Southern Canal and continue by metes-and-bounds through said section 23.

south 88 degrees 49 minutes 55 seconds east, 418.10 feet;  
north 15 degrees 54 minutes 15 seconds east, 662.12 feet;  
south 88 degrees 49 minutes 55 seconds east, 675.00 feet;  
south 0 degree 34 minutes 46 seconds west, 640.38 feet;  
south 88 degrees 49 minutes 55 seconds east, 3,477.03 feet

to a point on the east line of section 23, which is north 0 degree 37 minutes west, 945.29 feet from the southeast corner of section 23;

Thence northerly along the east line of section 23 3,788.97 feet, more or less, to the witness point on the southerly right of way of the Southern Canal and the point of beginning, containing approximately 251 acres, and

(2) Lots 7, 9, 11, 13, 14, 15, 17, 18, 20, 22, and 24, section 24, township 2 north, range 6 east, Gila and Salt River meridian, containing approximately 343 acres and subject to conditions, reservations and easements of section 3 (a), (b), (c), and (d) as authorized by virtue of this Act.

(b) 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. (102 Stat. 2725)

EXPLANATORY NOTES

**Codification.** This Act is not codified in the U.S. Code. House from Interior and Insular Affairs; H.R. Rept. No. 100-921. Passed House September

**Legislative History.** H.R. 5066, Public Law 100-544 in the 100<sup>th</sup> Congress. Reported in the 22, 1988. Passed Senate October 14, 1988. Approved October 28, 1988.

October 28, 1988

3618

**ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979  
AMENDMENTS**

An Act to improve the protection and management of archeological resources on Federal land.  
(Act of October 28, 1988, Public Law 100-555, 102 Stat. 2778; 16 U.S.C. § 470mm.)

**[Section 14 added.]**—The Archeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. § 470ii) be amended to add the following new section after section 13:

"Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

"(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies." (102 Stat. 2778, 16 U.S.C. § 470mm.)

EXPLANATORY NOTES

**References in the Text.** The Archeological Resources Protection Act of 1979, Act of October 31, 1979 (Public Law 96-95, 93 Stat. 721) referenced above appears in Volume IV at page 3170. Extracts from the Act as amended by this Act appear in Supplement II at page

S1082.

**Legislative History.** S. 1985, Public Law 100-555 in the 100<sup>th</sup> Congress. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 100-569. Passed Senate October 11, 1988. Passed House October 13, 1988.

**ADDITIONAL APPROPRIATIONS FOR THE CENTRAL  
UTAH PROJECT; JOHN MUIR HISTORIC SITE,  
YOSEMITE NATIONAL PARK**

An act to authorize additional appropriations for the Central Utah Project, to implement a settlement with the Strawberry Water Users, to expand the John Muir Historic Site, to prohibit the expansion of any reservoir within the boundaries of Yosemite National Park, and for other purposes. (Act of October 31, 1988, Public Law 100-563, 102 Stat. 2826; 43 U.S.C. §620k note.)

**Section 1. [Authorization of additional amounts for the Colorado River Storage Project.]**—In order to provide for the continued construction of the Colorado River Storage Project, and for the continued construction of the municipal and industrial water features of the Bonneville Unit of the Central Utah Project, the amount which section 12 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 620k), authorizes to be appropriated, which was increased by the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. §620k note), is hereby further increased by \$45,456,000 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 in such Act of August 10, 1972. (102 Stat. 2826; 43 U.S.C. § 620k.)

EXPLANATORY NOTE

**References in the Text.** Section 12 of the Act of April 11, 1956 (ch. 203, 70 Stat. 110) referenced above appears in Volume II at page 1258. The Act of August 10, 1972 (Public Law 92-370, 86 Stat. 525) referenced above appears in Volume IV at page 2657.

**Sec. 2. [Environmental impact statement for irrigation and drainage system.]**—Not later than December 31, 1989, the Secretary shall complete an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332) for the Irrigation and Drainage System of the Bonneville Unit of the Central Utah Project and submit such statement to the Congress.

EXPLANATORY NOTE

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

**Sec. 3. [Fish and wildlife mitigation and recreation.]**—Of the amounts appropriated for fiscal year 1990 for the construction of the Colorado River Storage Project, including funds previously authorized for fiscal year 1989, such funds in the manner previously scheduled by the Upper Colorado River Basin Office, Bureau of Reclamation, shall be available only for fish and wildlife mitigation and recreation in accordance with the schedule contained in the report of the Committee on Interior and Insular Affairs accompanying this Act (H. Rept. 100-915). (102 Stat. 2826)

**Sec. 4. [Strawberry Valley land compensation and exchange.]—(a) [Purposes.]**—The purposes of this section are—

(1) to modify the boundary of the Uinta National Forest to include certain Strawberry Valley Project lands currently administered by the Bureau of Reclamation, in order to provide more efficient management for public benefit;

(2) to transfer certain lands, and to compensate the Association for the loss of certain contractual surface rights and interests; and

(3) to provide for rehabilitation of certain of those lands to be administered by the Forest Service for public benefit.

**(b) [Definitions.]**—For the purposes of this section—

(1) the term "Association" means the Strawberry Water Users Association,

(2) the term "Secretary" means the Secretary of the Interior, and

(3) the term "Project Lands" means approximately 56,870 acres of Strawberry Valley Project Lands and includes 95 acres to be transferred to the Association, 25,990 acres of recreation lands associated with the Bonneville Unit of the Central Utah Project, and 30,785 acres of remaining Strawberry Valley Project Lands.

**(c) [Boundary modification of Uinta National Forest.]**—(1) The exterior boundary of the Uinta National Forest shall be modified to include 56,775 acres of the original 56,870 acres of Strawberry Valley Project lands as generally depicted on a map entitled "Boundary Modification, Uinta National Forest", and dated May 1988. The effective date of such modification shall be the date upon which administrative jurisdiction is transferred to the Secretary of Agriculture in accordance with subsection (e)(1)(B). Those lands encompassed by the modified boundary include 25,990 acres of recreation lands associated with the Bonneville Unit of the Central Utah Project and 30,785 acres of remaining Project lands. Such lands shall be administered by the Forest Service in accordance with applicable laws except that the 25,990 acres shall continue to be managed by the Forest Service as recreation lands in accordance with the purposes set forth in the Memorandum of Agreement between the Department of the Interior, Bureau of Reclamation, Upper Colorado Region, and the United States Forest Service (Contract No. 2-07-40-L3016) dated February 2, 1982.

October 31, 1988

THE CENTRAL UTAH PROJECT

3621

(2) A map depicting the modified boundary of the Uinta National Forest shall be on file and available for public inspection in the office of the Chief of the Forest Service and appropriate field offices and the House Interior and Insular Affairs Committee and the Senate Energy and Natural Resources Committee.

**(d) [Valid existing rights.]**—(1) Notwithstanding any other provision of this section, the administration by the Forest Service of the lands described in subsection (c) shall not—

(A) affect or interfere with the authority of the Bureau of Reclamation to construct, operate, maintain, replace, or improve, as necessary, project facilities and access thereto associated with the Strawberry Valley Reclamation Project and Bonneville Unit of the Central Utah Project; or

(B) diminish any other authorized uses of the lands for water resource and power development under Federal law.

(2) The association shall relinquish all of its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of the Project Lands in accordance with subsection (e)(2). Notwithstanding any other provision of this section, all other contractual rights and interests of the Association in the Strawberry Valley Reclamation Project shall remain unchanged. The Association shall be exempt from fees or charges for licenses or permits, other than grazing fees, for project related facilities on Project Lands.

**(e) [Strawberry Valley land transfers, and other considerations.]**—(1)(A)

The Secretary is hereby authorized and directed to convey to the Association 95 acres in fee title of Project lands, together with all improvements, as shown on a plat appended to the map referred to in subsection (c)(1). This action is consistent with the intent of the Act of April 4, 1910 (chapter 140, 36 Stat. 269).

EXPLANATORY NOTE

**Reference in the Text.** An extract from the Act of April 4, 1910 (ch. 140, 36 Stat. 269) referenced above appears in Volume I at page 137.

(B) Within 15 days of payment of compensation to the Association in accordance with subsection (e)(2), the Secretary shall transfer administrative jurisdiction to the Secretary of Agriculture over the 30,785 acres of remaining Project Lands and the 25,990 acres of recreation lands. Management of the surface shall be subject to applicable law.

(C) Notwithstanding any other provision of this section, the association shall retain its contractual rights to issue oil, gas, coal and mineral leases, excluding sand and gravel, on the Project lands. The authority of the Association to issue such leases and to utilize revenues therefrom as set forth in Interior Solicitor's opinion M-36863 dated August 8, 1972 (79 I.D. 513)

October 31, 1988

3622

THE CENTRAL UTAH PROJECT

is hereby confirmed. All such revenues shall be used and applied to Strawberry Valley Reclamation Project purposes.

**(2) [Compensation.]**—There is authorized to be appropriated under Section 8, of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 620g), \$15,000,000 as compensation to the Association which shall be available only for such compensation and must be used for Strawberry Valley Reclamation Project purposes. Of the amounts appropriated hereafter under section 8 of such Act, the first \$15,000,000 shall be paid to the Association. Upon receipt of such compensation, the Association shall relinquish all of its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of Project Lands.

**(3) [Other considerations.]**—The Association shall be entitled to retain the first right of refusal to grazing privileges on the 30,785 acres of remaining Project Lands, and if permitted under the grazing rehabilitation plan pursuant to subsection (f), on the 25,990 acres of recreation lands.

**(f) [Rehabilitation of lands.]**—The Forest Service shall, in coordination with the State of Utah and other appropriate agencies begin long-term rehabilitation of Project Lands. Such rehabilitation shall be five years in duration and shall permit continued grazing uses consistent with such rehabilitation. There is authorized to be appropriated under section 8 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 620g), \$3,000,000 which shall be available only for such rehabilitation. The Association shall be held harmless for any costs associated with rehabilitation.

**(g) [Interim recreation management by Forest Service.]**—Until administrative jurisdiction of the 25,990 acres of recreation lands is transferred to the Secretary of Agriculture in accordance with subsection (e)(1)(B), the Congress authorizes and directs the Secretary of Agriculture to expend National Forest System appropriated funds in lieu of Department of Interior, Bureau of Reclamation funds to manage the 25,990 acres of recreation lands for the Strawberry Reservoir adjacent to the Uinta National Forest in Utah. Such expenditures shall be in accordance with the provisions of the Memorandum of Agreement (Contract No. 2-07-40-L3016) dated February 2, 1982.

**(h) [Land exchange.]—(1) [Authorization.]**—The Secretary of Agriculture may exchange or sell the National Forest system lands, including any administrative sites and improvements thereon, described in subsection (h)(2). Disposal or exchange of these properties is intended to facilitate the acquisition of administrative sites and offices together with improvements thereon at either Provo, Utah County, Utah or near Heber City, Wasatch County, Utah, as specified by the Secretary of Agriculture. If the sale option is exercised, moneys collected shall be held in a special account intended for this purpose and are hereby authorized for expenditure without further appropriation.

October 31, 1988

JOHN MUIR NATIONAL HISTORIC SITE

3623

**(2) [Lands.]**—The lands referred to in subsection (h)(1) are those lands which are depicted on a plat, entitled Heber City, Utah, dated April 17, 1978, and May 7, 1978. The plat shall be on file and available for public inspection in the office of the Chief of the Forest Service and appropriate field offices.

**(3) [Requirement of equal value.]**—If the lands are exchanged, the values, as determined by the Secretary of Agriculture, of the lands and building to be exchanged under this section shall be equal, or if not equal, shall be equalized by the payment of money to the grantor or the Secretary of Agriculture as the circumstances require so long as the payment does not exceed 25 percent of the total value of the land (including any improvements thereon) transferred out of Federal ownership. The Secretary of Agriculture shall make every reasonable effort to keep any such payment to the minimum amount necessary to equalize the values involved. (102 Stat. 2826)

**Sec. 5. [Boundary change for John Muir National Historic Site California.]—(a) [Map—Land acquisition.]**—The Secretary of the Interior is authorized to acquire (by donation, purchase with donated or appropriated funds, or exchange) lands and interests in land within the area generally depicted on the map entitled "Boundary Map, John Muir National Historic Site" numbered 426-80,015B and dated July 1988. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. Lands and interests in lands, within the boundaries of such area which are owned by the State of California or any political subdivision thereof, may be acquired only by donation or exchange. The Secretary of the Interior shall acquire only such interests in the John Muir grave site (as depicted on the map referred to in this subsection) as may be necessary to preserve the site in its present undeveloped condition and to provide all maintenance of the site by the Secretary of the Interior. (16 U.S.C. § 461 note.)

**(b) [Inclusion within historic site.]**—The lands and interests in lands within the boundaries of the area depicted on the map referred to in subsection (a) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. § 461 note).

EXPLANATORY NOTE

**Reference in the Text.** The Act of August 31, 1964 (78 Stat. 753) referenced above does not appear herein.

**(c) [Authorization of appropriations.]**—For purposes of acquiring the lands and interests in lands within the area depicted on the map referred to in subsection (a), there are authorized to be appropriated such sums as may be necessary.

**(d) [Cooperative agreement.]**—The Secretary of the Interior, acting through the Director of the National Park Service, is authorized to enter into a

October 31, 1988

3624

YOSEMITE NATIONAL PARK

cooperative agreement with the East Bay Regional Park District of Oakland, California, for the operation and maintenance by such District of trails on lands within the John Muir National Historic Site. (102 Stat. 2829, 16 U.S.C. § 79-1.)

**Sec. 6. [Yosemite National Park.]**—Notwithstanding any other provision of law, no Federal lands may be used for the expansion of the capacity of any reservoir which is located within the boundaries of Yosemite National Park unless Congress enacts specific statutory authorization after the date of the enactment of this Act for such expansion. (102 Stat. 2830)

EXPLANATORY NOTE

**Legislative History.** H.R. 3408, Public Law 100-563 in the 100<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 100-915. Passed House on September 13, 1988. Passed Senate, amended on September 30, 1988. House concurred in Senate amendment with amendments October 6, 1988. Senate concurred in House amendments with amendments October 11, 1988. House concurred in Senate amendments October 12, 1988.

November 3, 1988

3625

## **COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1988**

An Act to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes. (Act of November 3, 1988, Public Law 100-585, 102 Stat. 2973)

**Section 1. [Short Title.]**—This Act may be cited as the "Colorado Ute Indian Water Rights Settlement Act of 1988".

**Sec. 2. [Findings.]**—The Congress finds that—(1) The Federal reserved water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe are the subject of existing and prospective lawsuits involving the United States, the State of Colorado, and numerous parties in southwestern Colorado.

(2) These lawsuits will prove expensive and time consuming to the Indian and non-Indian communities of southwestern Colorado.

(3) The major parties to the lawsuits and others interested in the settlement of the water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have worked diligently to settle these claims, resulting in the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing which was executed in compliance with the cost sharing requirements of chapter IV of Public Law 99-88 (99 Stat. 293), and the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.

### EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Stat. 283) referenced above appear in Volume Supplemental Appropriations Act of 1985, the V at page 3458. Act of August 15, 1985 (Public Law 99-88, 99

(4) The Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe, by resolution of their respective tribal councils, which are the duly recognized governing bodies of each Tribe, have approved the December 10, 1986, Agreement and sought Federal implementation of its terms.

(5) This Act is required to implement portions of the above two agreements.

**Sec. 3. [Definitions.]**—For purposes of this Act—(1) The term "Agreement" means the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986, among the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the United States, and other participating parties.

November 3, 1988

3626 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

(2) The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado and New Mexico, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. § 620; commonly referred to as the "Colorado River Storage Project Act") and the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. § 1501 et seq.).

(3) The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. § 620; commonly referred to as the "Colorado River Storage Project Act"), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. § 1501 et seq.), and as further authorized by the Colorado River Basin Salinity Control Act (98 Stat. 2933; 43 U.S.C. § 1591).

EXPLANATORY NOTE

<b>References in the Text.</b> The Act of April 11, 1956 (ch. 203, 70 Stat. 105) referenced above appears in Volume II at page 1248, in Supplement I at page S247, and in Supplement II at page S873.	The Colorado River Basin Project Act, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 885) appears in Volume IV at page 2395 and in Supplement II at page S995.
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(4) The term "final consent decree" means the consent decree contemplated to be entered after the date of enactment of this Act in the District Court, Water Division No. 7, State of Colorado, which will implement certain provisions of the Agreement.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The terms "Tribe" and "Tribes" mean the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, or both Tribes, as the context may require.

(7) The term "water year" means a year commencing on October 1 each year and running through the following September 30. (102 Stat. 2973)

**Sec. 4. [Provision of water to Tribes.]—(a) [Water from the Animas-La Plata and Dolores Projects.]—**The Secretary is authorized to supply water to the Tribes from the Animas-La Plata and Dolores Projects in accordance with the Agreement: *Provided*, That nothing in this subsection or in the authorized purposes of the projects may be construed to permit or prohibit the sale, exchange, lease, use, or other disposal of such water by the Tribes. Any such sale, exchange, lease, use, or other disposal of water from these projects shall be governed solely by the other provisions of this Act and the Agreement as modified pursuant to section 11 of this Act.

**(b) [Application of Federal Reclamation Laws.]—**Except as provided in section 5 of this Act, the water supplied to the Tribes from the Animas-La Plata Project and the Dolores Project shall be subject to Federal reclamation laws only to the extent needed to effectuate the terms and conditions contained in Article III, section A, subsections 1 and 2 and Article III, section B of subsection 1 of the

November 3, 1988

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT 3627

Agreement. (102 Stat. 2974)

**Sec. 5. [Disposal of water.]—(a) [Indian Intercourse Act.]**—The provisions of section 2116 of the Revised Statutes (25 U.S.C. § 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree: *Provided*, That nothing in this subsection shall be considered to amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

**(b) [Restriction on disposal of waters into Lower Colorado River Basin.]**—None of the waters from the Animas-La Plata or Dolores Projects may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin unless water within the Colorado River Basin held by non-Federal, non-Indian holders of that water pursuant to any water rights could be so sold, exchanged, leased, used, or otherwise disposed of under State law, Federal law, interstate compacts, or international treaty pursuant to a final, nonappealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact.

**(c) [Use of water rights.]—(1)** The use of the rights referred to in subsection (a) within the State of Colorado shall be governed solely as provided in the Agreement as modified pursuant to section 11 of this Act and this subsection. The Agreement is hereby modified to provide that a Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Agreement and final consent decree off its reservation. If either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe so elects, and as a condition precedent to such sale, exchange, lease, use or other disposition, that portion of the Tribe's water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(2) The characterizations in the Agreement of any water rights which may be used off the reservation of the respective Tribe as either "project reserved water right" or "nonproject reserved water right" are hereby expressly disapproved and any claim to water rights so characterized shall be extinguished when the final consent decree is entered.

**(d) [Rules of construction.]**—Nothing in this Act or in the Agreement shall

(1) constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservations;

November 3, 1988

3628 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

(2) constitute authority for the sale, exchange, lease, use, or other disposal of any water held pursuant to a Colorado State water right, or of any Colorado State water right, outside the State of Colorado; or

(3) be deemed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Colorado. (102 Stat. 2974)

**Sec. 6. [Repayment of project costs.]—(a) [Municipal and industrial water.]—**(1) The Secretary shall defer, without interest, the repayment of the construction costs allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used either by the Tribe or pursuant to a water use contract with the Tribe. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, repayment of that increment's pro rata share of such allocable construction costs shall commence by the Tribe and the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs.

**(b) [Agricultural irrigation water.]—**(1) The Secretary shall defer, without interest, the repayment of the construction costs within the capability of the land to repay, which are allocable to each Tribe's agricultural irrigation water allocation from the Animas-La Plata and Dolores Projects in accordance with the Act of July 1, 1932 (25 U.S.C. § 386a; commonly referred to as the "Leavitt Act"), and section 4 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. § 620c; commonly referred to as the "Colorado River Storage Project Act"). Such allocated construction costs which are beyond the capability of the land to repay shall be repaid as provided in subsection (g) of this section. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's agricultural irrigation allocation from the Animas-La Plata Project, which costs shall not be reimbursable by the Tribe.

EXPLANATORY NOTE

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

November 3, 1988

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT 3629

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs. During any period in which water is used by a tribal lessee on land owned by non-Indians, the Tribe shall bear that increment's pro rata share of the allocated agricultural irrigation construction costs within the capability of the land to repay as established in subsection (b)(1).

**(c) [Annual costs with respect to Ridges Basin Pumping Plant.]**—(1) The Secretary shall bear any increased annual operation, maintenance, and replacement costs to Animas-La Plata Project water users occasioned by a decision of either Tribe not to take delivery of its Animas-La Plata Project water allocations from Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal pursuant to Article 111, section A, subsection 2.I and Article III, section B, subsection 1.I of the Agreement until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe. Such costs shall not be reimbursable by the Tribe.

(2) As an increment of its water from the Animas-La Plata Project is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of such increased annual operation, maintenance, and replacement costs, if any.

**(d) [Secretarial deferral.]**—The Secretary may further defer all or a part of the tribal construction cost obligations and bear all or a part of the tribal operation, maintenance, and replacement obligations described in this section in the event a Tribe demonstrates that it is unable to satisfy those obligations in whole or in part from the gross revenues which could be generated from a water use contract for the use of its water either from the Dolores or the Animas-La Plata Projects or from the Tribe's own use of such water.

**(e) [Use of water.]**—For the purpose of this section, use of water shall be deemed to occur in any water year in which a Tribe actually uses water or during the term of any water use contract. A water use contract pursuant to which the only income to a Tribe is in the nature of a standby charge is deemed not to be a use of water for the purposes of this section.

**(f) [Authorization of appropriations.]**—There is hereby authorized to be appropriated such funds as may be necessary for the Secretary to pay the annual operation, maintenance, and replacement costs as provided in this section.

**(g) [Costs in excess of ability of the irrigators to repay.]**—The portion of the costs of the Animas-La Plata Project in excess of the ability of the irrigators to repay shall be repaid from the Upper Colorado River Basin Fund pursuant to the Colorado River Storage Project Act and the Colorado River Basin Project Act.

November 3, 1988

3630 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

**(h) [Deferral of certain construction costs.]**—Repayment of the portion of the construction costs of the Florida Project which have been allocated to the 563 acre-feet of agricultural irrigation water for which the Southern Ute Tribe is responsible shall be deferred by the Secretary pursuant to the Act of July 1, 1932 (25 U.S.C. § 386a; 47 Stat. 564) as provided in section 4(d) of the Act of April 11, 1956 (43 U.S.C. § 620c; 70 Stat. 107), and the Florida Water Conservancy District's current repayment obligation shall not change. (102 Stat. 2975)

**Sec. 7. [Tribal Development Funds.]—(a) [Establishment.]**—There is hereby authorized to be appropriated the total amount of \$49,500,000 for three annual installment payments to the Tribal Development Funds which the Secretary is authorized and directed to establish for each Tribe. Subject to appropriation, and within 60 days of availability of the appropriation to the Secretary, the Secretary shall allocate and make payment to the Tribal Development Funds as follows:

(1) To the Southern Ute Tribal Development Fund, in the first year, \$7,500,000; in the two succeeding years, \$5,000,000 and \$5,000,000, respectively.

(2) To the Ute Mountain Ute Tribal Development Fund, in the first year, \$12,000,000; in the two succeeding years, \$10,000,000 and \$10,000,000, respectively.

**(b) [Adjustment.]**—To the extent that any portion of such amount is contributed after the period described above or in amounts less than described above, the Tribes shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Funds, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had that amount been placed in the fund as set forth in section 7(a).

**(c) [Tribal development.]**—(1) The Secretary shall, in the absence of an approved tribal investment plan provided for in paragraph (2), invest the moneys in each Tribal Development Fund in accordance with the Act entitled "An Act to authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. § 162a). Separate accounts shall be maintained for each Tribe's development fund. The Secretary shall disburse, at the request of a Tribe, the principal and income in its development fund, or any part thereof, in accordance with an economic development plan approved under paragraph (3).

EXPLANATORY NOTE

**Reference in the Text.** The Act of June 24, 1938 referenced above does not appear herein.

(2) Each Tribe may submit a tribal investment plan for all or part of its Tribal Development Fund as an alternative to the investment provided for in paragraph (1). The Secretary shall approve such investment plan within

November 3, 1988

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT 3631

60 days of its submission if the Secretary finds the plan to be reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Development Fund shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan. The Secretary may take such steps as he deems necessary to monitor compliance with the approved investment plan. The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds. The principal and income from tribal investments under an approved investment plan shall be subject to the provisions of this section and shall be expended in accordance with an economic development plan approved under paragraph (3).

(3) Each Tribe shall submit an economic development plan for all or any portion of its Tribal Development Fund to the Secretary. The Secretary shall approve such plan within 60 days of its submission if the Secretary finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, the Secretary shall, at the time of decision, set forth in writing and with particularity the reasons for such disapproval. Each Tribe may alter the economic development plan, subject to the approval of the Secretary as set forth in this subsection. The Secretary shall not be directly or indirectly liable for any claim or cause of action arising from the approval of an economic development plan or from the use and expenditure by the Tribe of the principal of the funds and income accruing to the funds, or any portion thereof, following the approval by the Secretary of an economic development plan.

**(d) [Per capita distributions.]**—Under no circumstances shall any part of the principal of the funds, or of the income accruing to such funds, or the revenue from any water use contract, be distributed to any member of either Tribe on a per capita basis.

**(e) [Limitation on setting aside Final Consent Decree.]**—Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because subsection (c) is not satisfied or implemented. (102 Stat. 2977)

**Sec. 8. [Waiver of claims.]—(a) [General authority.]**—The Tribes are authorized to waive and release claims concerning or related to water rights as described in the Agreement.

**(b) [Condition on performance by Secretary.]**—Performance by the Secretary of his obligations under this Act and payment of the moneys authorized to be paid to the Tribes by this Act shall be required only when the Tribes execute a waiver and release as provided in the Agreement.

November 3, 1988

3632 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

**Sec. 9. [Administration.]**—In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided in Article IV of the Agreement.

**Sec. 10. [Indian Self-determination Act.]—(a) [In general.]**—The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject to the provisions of the Indian Self Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. § 450 et seq.) to the same extent as if such functions were performed by the Bureau of Indian Affairs.

EXPLANATORY NOTE

**Reference in the Text.** The Indian Self (88 Stat. 2203) referenced above does not Determination and Education Assistance Act appear herein.

**(b) [Application.]**—This section shall not apply if the application of this section would detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects. (102 Stat. 2978)

**Sec. 11. [Modification of Agreement—Rule of construction.]—(a) [Modification.]**—The Agreement shall be deemed to have been modified to conform to this Act.

**(b) [Rule of construction.]**—The Agreement shall be construed in a manner consistent with this Act. This Act is intended solely to permit settlement of existing and prospective litigation among the signatory parties to the Agreement. This Act is the result of a voluntary compromise agreement between the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, local water districts and municipalities, and the United States. Accordingly, no provision of this Act, the Agreement, or the final consent decree shall be construed as altering or affecting the determination of any questions relating to the reserved water rights belonging to other Indian tribes.

**Sec. 12. [Individual members of Tribes.]**—Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

**Sec. 13. [Effective date.]—(a)** Sections 4(b), 5, and 6 of this Act shall take effect on the date on which the final consent decree contemplated by the Agreement is entered by the District Court, Water Division No. 7, State of Colorado. Any moneys appropriated under section 7 of this Act shall be placed into the Ute Mountain Ute and Southern Ute Tribal Development Funds in the Treasury of the United States together with other parties' contributions to the Tribal Development Funds, but shall not be available for disbursement pursuant to section 7 until such time as the final consent decree is entered. If the final

November 3, 1988

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT 3633

consent decree is not entered by December 31, 1991, the moneys so deposited shall be returned, together with a ratable share of accrued interest, to the respective contributors and the Ute Mountain Ute and Southern Ute Tribal Development Funds shall be terminated and the Agreement may be voided by any party to the Agreement. Upon such termination, the amount contributed thereto by the United States shall be deposited in the general fund of the Treasury.

(b) No provision of this Act shall be of any force or effect if the final consent decree is not executed and approved by the court.

**Sec. 14. [Voiding of Agreement.]**—The United States shall not exercise its right to void the Agreement pursuant to Article VI, section C, subsection 2 thereof. (102 Stat. 2979)

EXPLANATORY NOTES

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

**Legislative History.** H.R. 2642 (S. 1415) Public Law 100-585 in the 100<sup>th</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Repts. 100-932. Passed

House October 3, 1988. Reported in the Senate from Indian Affairs and Energy and Natural Resources; S. Repts. No. 100-555 accompanying S. 1415. Passed Senate on October 14, 1988.

**ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979  
AMENDMENTS**

An act to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes. (Act of November 3, 1988, Public Law 100-588, 102 Stat. 2983)

**Section 1. [Amendments to Sections 3(3), 6(a), 6(d), 10.]**—(a) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period. (16 U.S.C. § 470bb.)

(b) Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface". (16 U.S.C. § 470ee.)

(c) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(d) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program." (102 stat. 2983, 16 U.S.C. § 470ii)

EXPLANATORY NOTES

**References in the Text.** The Archeological Resources Protection Act of 1979, Act of October 31, 1979 (Public Law 96-95, 93 Stat. 721) referenced above appears in Volume IV at page 3170. Extracts from the Act, as amended by this Act, appear in Supplement II at page S1080.

**Legislative History.** H.R. 4068, Public Law

100-588 in the 100<sup>th</sup> Congress. Reported in House from Interior and Insular Affairs; H.R. Repts. No. 100-791, Pt. 1. Passed House on July 26, 1988. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 100-566. Passed the Senate, amended on October 14, 1988. House concurred in Senate amendment on October 19, 1988.

**SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT;  
ALL AMERICAN CANAL LINING PROJECT**

An act to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, to authorize the lining of the All American Canal, and for other purposes. (Act of November 17, 1988, Public Law 100-675, 102 Stat. 4000)

**TITLE I-SAN LUIS REY INDIAN WATER RIGHTS  
SETTLEMENT ACT**

**Sec. 101. [Short Title.]**—This title may be cited as the "San Luis Rey Indian Water Rights Settlement Act".

**Sec. 102. [Definitions.]**—For purposes of this title: **(1) [Bands.]**—The term "Bands" means the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians which are recognized by the Secretary of the Interior as the governing bodies of their respective reservations in San Diego County, California.

**(2) [Fund.]**—The term "Fund" means the San Luis Rey Tribal Development Fund established by section 105.

**(3) [Indian Water Authority.]**—The term "Indian Water Authority" means the San Luis Rey River Indian Water Authority, an intertribal Indian entity established by the Bands.

**(4) [Local entities.]**—The term "local entities" means the city of Escondido, California; the Escondido Mutual Water Company; and the Vista Irrigation District.

**(5) [Settlement agreement.]**—The term "settlement agreement" means the agreement to be entered into by the United States, the Bands, and the local entities which will resolve all claims, controversies, and issues involved in all the pending proceedings among the parties.

**(6) [Secretary.]**—The term "Secretary" means the Secretary of the Interior.

**(7) [Supplemental water.]**—The term "supplemental water" means water from a source other than the San Luis Rey River.

**Sec. 103. [Congressional findings; local contributions; purpose.]**—**(a) [Findings.]**—The Congress finds the following:

(1) The Reservations established by the United States for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians on or near the San Luis Rey River in San Diego County, California, need a reliable source of water.

(2) Diversions of water from the San Luis Rey River for the benefit of the local entities commenced in the early 1890s and continue to be an important source of supply to those communities.

November 17, 1988

3636 SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT

(3) The inadequacy of the San Luis Rey River to supply the needs of both the Bands and the local entities has given rise to litigation to determine the rights of various parties to water from the San Luis Rey River.

(4) The pendency of the litigation has—(A) severely impaired the Bands' efforts to achieve economic development on their respective reservations,

(B) contributed to the continuation of high rates of unemployment among the members of the Bands,

(C) increased the extent to which the Bands are financially dependent on the Federal Government, and

(D) impeded the Bands and the local entities from taking effective action to develop and conserve scarce water resources and to preserve those resources for their highest and best uses.

(5) In the absence of a negotiated settlement—(A) the litigation, which was initiated almost 20 years ago, is likely to continue for many years,

(B) the economy of the region and the development of the reservations will continue to be adversely affected by the water rights dispute, and

(C) the implementation of a plan for improved water management and conservation will continue to be delayed.

(6) An agreement in principle has been reached under which a comprehensive settlement of the litigation would be achieved, the Bands' claims would be fairly and justly resolved, the Federal Government's trust responsibility to the Bands would be fulfilled, and the local entities and the Bands would make fair and reasonable contributions.

(7) The United States should contribute to the settlement by providing funding and delivery of water from a supplemental source. Water developed through conjunctive use of groundwater on public lands in southern California or water to be reclaimed from lining the previously unlined portions of the All American Canal can provide an appropriate supplemental water source.

**(b) [Purpose.]**—It is the purpose of this title to provide for the settlement of the reserved water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, in a fair and just manner which—

(1) provides the Bands with a reliable water supply sufficient to meet their present and future needs;

(2) promotes conservation and the wise use of scarce water resources in the upper San Luis Rey River System;

(3) establishes the basis for a mutually beneficial, lasting, and cooperative partnership among the Bands and the local entities to replace the adversary relationships that have existed for several decades; and

(4) fosters the development of an independent economic base for the Bands.

(102 Stat. 4000)

November 17, 1988

SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT 3637

**Sec. 104. [Settlement of water rights dispute.]**— Sections 106 and 109 of this Act shall take effect only when—

(1) the United States; the City of Escondido, California; the Escondido Mutual Water Company; the Vista Irrigation District; and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians have entered into a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission; and

(2) stipulated judgments or other appropriate final dispositions have been entered in said proceedings. (102 Stat. 4001)

**Sec. 105. [San Luis Rey Tribal Development Fund.]—(a) [Establishment of fund.]**—There is hereby established within the Treasury of the United States the "San Luis Rey Tribal Development Fund".

**(b) [Authorization of appropriations.]**—(1) There is authorized to be appropriated to the San Luis Rey Tribal Development Fund \$30,000,000, together with interest accruing from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Federal obligations of comparable maturity. Following execution of the settlement agreement, judgments, and other appropriate final dispositions specified in section 104, the Secretary of the Treasury shall allocate and make available such monies from the trust fund as are requested by the Indian Water Authority.

(2) Any monies not allocated to the Indian Water Authority and remaining in the fund authorized by this section shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. § 162a). Such interest shall be made available to the Indian Water Authority in the same manner as the monies identified in paragraph (1). (102 Stat. 4002)

EXPLANATORY NOTE

**Reference in the Text.** The Act of June 24, 1938, referenced above does not appear herein.

**Sec. 106. [Duties of the United States for development of supplemental water.]—(a) [Obligation to arrange for development of water for Bands and local entities.]**—To provide a supplemental water supply for the benefit of the Bands and the local entities, subject to the provisions of the settlement agreement, the Secretary is authorized and directed to:

(1) arrange for the development of not more than a total of 16,000 acre-feet per year of supplemental water from public lands within the State of California outside the service area of the Central Valley Project; or

November 17, 1988

3638 SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT

(2) arrange to obtain not more than a total of 16,000 acre-feet per year either from water conserved by the works authorized in title II of this Act, or through contract with the Metropolitan Water District of Southern California. Nothing in this section or any other provision of this title shall authorize the construction of any new dams, reservoirs or surface water storage facilities.

**(b) [Authority to utilize existing programs and public lands.]**—To carry out the provisions of subsection (a), the Secretary may, subject to the rights and interests of other parties and to the extent consistent with the requirements of the laws of the State of California and such other laws as may be applicable:

(1) utilize existing programs and authorities; and

(2) permit water to be pumped from beneath public lands and, in conjunction therewith, authorize a program to recharge some or all of the groundwater that is so pumped.

**(c) [Terms and conditions of water deliveries.]**—Such supplemental water shall be provided for use by the Bands on their reservation and the local entities in their service areas pursuant to the terms of the settlement agreement and shall be delivered at locations, on a schedule and under terms and conditions to be agreed upon by the Secretary, the Indian Water Authority, the local entities and any agencies participating in the delivery of the water. It may be exchanged for water from other sources for use on the Bands' reservations or in the local entities' service areas.

**(d) [Cost of developing and delivering water.]**—The cost of developing and delivering supplemental water pursuant to this section shall not be borne by the United States, and no Federal appropriations are authorized for this purpose.

**(e) [Report to Congress.]**—Notwithstanding the provisions of section 104, within nine months following enactment of this Act, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate on (1) the Secretary's recommendations for providing a supplemental water source including a description of the works, their costs and impacts, and the method of financing; and (2) the proposed form of contract for delivery of supplemental water to the Bands and the local entities. When 60 calendar days have elapsed following submission of the Secretary's report, the Secretary shall execute the necessary contracts and carry out the recommended program unless otherwise directed by the Congress. (102 Stat. 4002)

**Sec. 107. [Establishment, status, and general powers of San Luis Rey River Indian Water Authority.]—(a) [Establishment of Indian Water Authority approved and recognized.]—**

**(1) [In general.]**—The establishment by the Bands of the San Luis Rey River Indian Water Authority as a permanent intertribal entity pursuant to duly adopted ordinances and the power of the Indian Water Authority to act for the Bands are hereby recognized and approved.

November 17, 1988

SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT 3639

**(2) [Limitation on power to amend or modify ordinances.]**—Any proposed modification or repeal of any ordinance referred to in paragraph (1) must be approved by the Secretary, except that no such approval may be granted unless the Secretary finds that the proposed modification or repeal will not interfere with or impair the ability of the Indian Water Authority to carry out its responsibilities and obligations pursuant to this Act and the settlement agreement.

**(b) [Status and general powers of Indian Water Authority.]—(1) [Status as Indian organization.]**—To the extent provided in the ordinances of the Bands which established the Indian Water Authority, such Authority shall be treated as an Indian entity under Federal law with which the United States has a trust relationship.

**(2) [Power to enter into agreements.]**—The Indian Water Authority may enter into such agreements as it may deem necessary to implement the provisions of this title and the settlement agreement.

**(3) [Investment power.]**—Notwithstanding paragraph (1) or any other provision of law, the Indian Water Authority shall have complete discretion to invest and manage its own funds: *Provided*, That the United States shall not bear any obligation or liability regarding the investment, management or use of such funds.

**(4) [Limitation on spending authority.]**—All funds of the Indian Water Authority which are not required for administrative or operational expenses of the Authority or to fulfill obligations of the Authority under this title, the settlement agreement, or any other agreement entered into by the Indian Water Authority shall be invested or used for economic development of the Bands, the Bands' reservation lands, and their members. Such funds may not be used for per capita payments to members of any Band.

**(c) [Indian Water Authority treated as tribal government for certain purposes.]**—The Indian Water Authority shall be considered to be an Indian tribal government for purposes of section 7871(a)(4) of the Internal Revenue Code of 1986. (102 Stat. 4003)

**Sec. 108. [Delegation of authority.]**—The Secretary and the Attorney General of the United States, acting on behalf of the United States, and the Bands, acting through their duly authorized governing bodies, are authorized to enter into the settlement agreement. The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the provisions of this title. (102 Stat. 4004)

**Sec. 109. [Authority of the Federal Energy Regulatory Commission and the Secretary of the Interior over power facilities and government and Indian lands.]—(a) [Power facilities.]**—Any license issued under the Act of June 10, 1920 (16 U.S.C. § 791a et seq., commonly referred to as Part I of the Federal Power Act) for any part of the system that diverts the waters of the San Luis Rey River originating above the intake to the Escondido Canal—

November 17, 1988

3640 SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT

(1) shall be subject to all of the terms, conditions, and provisions of the settlement agreement and this title, and

(2) shall not in any way interfere with, impair or affect the ability of the Bands, the local entities and the United States to implement, perform, and comply fully with all of the terms, conditions, and provisions of the settlement agreement.

EXPLANATORY NOTE

**Reference in the Text.** The Act of June 10, 1920, referenced above appears in Volume I at page 262. Amendments and annotations appear in Supplement I at page S56 and in Supplement II at page S813.

**(b) [Indian and government lands.]**—Notwithstanding any provision of Part I of the Federal Power Act to the contrary, the Secretary is exclusively authorized, subject to subsection (c), to lease, grant rights-of-way across, or transfer title to, any Indian tribal or allotted land, or any other land subject to the authority of the Secretary, which is used, or may be useful, in connection with the operation, maintenance, repair, or replacement of the system to divert, convey, and store the waters of the San Luis Rey River originating above the intake to the Escondido Canal or the supplemental water supplied by the Secretary under this Act.

**(c) [Approval by Indian Bands—Compensation to Indian owners.]**—Any disposition of Indian tribal or allotted land by the Secretary under the subsection (b) shall be subject to the approval of the governing Indian Band. Any individual Indian owner or allottee whose land is disposed of by any action of the Secretary under subsection (b) shall be entitled to receive just compensation. (102 Stat. 4004)

**Sec. 110. [Rules of construction.]—(a) [Eminent domain.]**—No provision of this title shall be construed as authorizing the acquisition by the Federal Government of any water or power supply or any water conveyance or power transmission facility through the power of eminent domain or any other nonconsensual arrangement.

**(b) [Status and authority of Indian Water Authority.]**—No provision of this title shall be construed as creating any implication with respect to the status or authority which the Indian Water Authority would have under any other law or rule of law in the absence of this title.

**Sec. 111. [Compliance with Budget Act.]**—To the extent any provision of this title provides new spending authority described in section 401(c)(2)(A) of the Congressional Budget Act of 1974, such authority shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. (102 Stat. 4005)

November 17, 1988

ALL AMERICAN CANAL LINING PROJECT

3641

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Congressional Budget Act of 1974, Act of July 12, 1974 (Public Law 93-344, 88 Stat. 298) referenced above appear in Supplement I at page S431 and in Volume IV at page 2877.

**TITLE II—ALL AMERICAN CANAL LINING**

**Sec. 201. [Congressional findings.]—** Congress hereby finds and declares that:

(1) The Boulder Canyon Project Act ("Project Act") was enacted to conserve the waters of the lower Colorado River for a number of public purposes, including the storage and delivery of water for reclamation of public lands and other uses exclusively within the United States.

(2) The Secretary of the Interior ("Secretary") was authorized by the Project Act to construct what is now Hoover Dam, Lake Mead, and the All American Canal and "to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon . . .".

(3) The Project Act provides that "no person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract" and in California the Secretary has entered into water delivery contracts with public agencies.

(4) The Secretary's water delivery contracts incorporate the Seven Party Agreement of August 18, 1931, under which water that is not applied to beneficial use by a California Contractor is available for use by the California Contractor with the next priority.

(5) The available supply of Colorado River water in California is insufficient to meet the priorities set forth in the Seven Party Agreement.

(6) The Secretary's water delivery contracts with the California Contractors provide that the total beneficial consumptive use under the first three priorities established in the contracts shall not exceed 3.85 million acre-feet of water per year.

(7) The rights of all California Contractors are defined by the Project Act, their contracts, and decisions and decrees of the United States Supreme Court.

(8) The Secretary has promulgated regulations pursuant to his authority under the Project Act establishing procedures to assure that deliveries of Colorado River water to each user will not exceed those reasonably required for its beneficial use.

(9) The Secretary has constructed the All American Canal and delivers water to the Imperial Irrigation District and Coachella Valley Water District under water delivery contracts by which those districts are entitled to receive deliveries of water in amounts reasonably required for potable and irrigation purposes.

3642 ALL AMERICAN CANAL LINING PROJECT

(10) Studies conducted by the Secretary show that significant quantities of water currently delivered into the All American Canal and its Coachella Branch are lost by seepage from the canals and that such losses could be reduced or eliminated by lining these canals. (102 Stat. 4006)

**Sec. 202. [Definitions.]**—As used in this title, the term—(1) "All American Canal Service Area" shall mean the Imperial Service Area and the Coachella Service Area as defined in the Imperial Irrigation District and Coachella Valley Water District water delivery contracts with the Secretary dated December 1, 1932, and October 14, 1934, respectively.

(2) "California Contractors" shall mean the Palo Verde Irrigation District; Imperial Irrigation District; Coachella Valley Water District; and, The Metropolitan Water District of Southern California.

(3) "Participating Contractor" shall mean a California Contractor who elects to participate in, and fund, all or a portion of the works described in section 203 of this title.

(4) "Project Act" shall mean the Boulder Canyon Project Act (45 Stat. 1057; 43 U.S.C. § 617-617t).

(5) "Secretary" shall mean the Secretary of the Interior.

(6) "Seven Party Agreement" shall mean that agreement dated August 18, 1931, providing the schedule of priorities for use of the waters of the Colorado River within California as published in section 6 of the General Regulations of the Secretary of the Interior dated September 28, 1931, and incorporated in the Secretary's water delivery contracts with the California Contractors.

(7) "Works" shall mean the facilities and measures specified in section 203(a) of this title. (102 Stat. 4006)

EXPLANATORY NOTE

**Reference in the Text.** The Boulder Canyon Project Act, Act of December 21, 1928 (ch. 42, 45 Stat. 1057) referenced above appears in Volume I at page 414. Annotations and amendments appear in Supplement I at page S89 and in Supplement II at page S839.

**Sec. 203. [Authorization of project.]—(a) [Canal lining authorized—Safety—Fish and fishing—Wildlife—Water from public lands.]**—The Secretary, in order to reduce the seepage of water, is authorized to—

(1) construct a new lined canal or to line the previously unlined portions of the All American Canal from the vicinity of Pilot Knob to Drop 4 and its Coachella Branch from Siphon 7 to Siphon 32, or construct seepage recovery facilities in the vicinity of Pilot Knob to Drop 4, including measures to protect public safety; and

(2) implement measures for the replacement of incidental fish and wildlife values adjacent to the canals foregone as a result of the lining of the canal or mitigation of resulting impacts on fish and wildlife resources from construction of a new canal, or a portion thereof. Such measures shall be on an acre-for-acre

November 17, 1988

ALL AMERICAN CANAL LINING PROJECT

3643

basis, based on ecological equivalency, and shall be implemented concurrent with construction of the works. The Secretary shall make available such public lands as he deems appropriate to meet the requirements of this subsection. The Secretary is authorized to develop ground water, with a priority given to nonpotable sources, from public lands to supply water for fish and wildlife purposes.

**(b) [Operation and maintenance determination.]**—The Secretary shall determine the impact of the works on the cost of operation and maintenance and the existing regulating and storage capacity of the All American Canal and its Coachella Branch. If the works result in any added operation and maintenance costs which exceed the benefits derived from increasing the regulating and storage capacity of the canals to the Imperial Irrigation District or the Coachella Valley Water District, the Secretary shall include such costs in the funding agreement for the works.

**(c) [Construction and funding agreement—Public health and safety.]**—The Secretary, subject to the provision of section 205 of this title, may enter into an agreement or agreements with one or more of the California Contractors for the construction or funding of all or a portion of the works authorized in subsection (a) of this section. The Secretary shall ensure that such agreement or agreements include provisions setting forth—

(1) the responsibilities of the parties to the agreement for funding and assisting with implementing all the duties of the Secretary identified in subsections (a) and (b) of this section;

(2) the obligation of the Participating Contractors to pay the additional costs identified in subsection (b) of this section as a result of the works;

(3) the procedures and requirement for approval and acceptance by the Secretary of such works, including approval of the quality of construction, measures to protect the public health and safety, mitigation or replacement, as appropriate, of fish and wildlife resources or values, and procedures for operation, maintenance, and protection of such works;

(4) the rights, responsibilities, and liabilities of each party to the agreement;

(5) the term of such agreements which shall not exceed 55 years and may be renewed if consented to by Imperial Irrigation District and Coachella Valley Water District according to their respective interests in the conserved water. If the funding agreements are not renewed, the Participating Contractors shall be compensated by the Imperial Irrigation District or the Coachella Valley Water District for their participation in the cost of the works. Such compensation shall be equal to the replacement value of the works less depreciation. Such depreciated value is to be based upon an engineering analysis by the Secretary of the remaining useful life of the works at the expiration of the funding agreements;

November 17, 1988

3644

ALL AMERICAN CANAL LINING PROJECT

(6) the obligation of the Participating Contractors or the United States for repair or other corrective action which would not have occurred in the absence of the works in the case of earthquake or other acts of God;

(7) the obligation of the Participating Contractors or the United States to hold harmless Imperial Irrigation District and Coachella Valley Water District for liability to third parties which occurs after the Secretary accepts the works and would not have occurred in the absence of the works; and,

(8) the requirement that the remaining net obligations due the United States for construction of the All American Canal owed on the date of enactment of this Act be paid by the Participating Contractors.

**(d) [Title to the works.]**—A Participating Contractor shall not receive title to any works constructed pursuant to this section by virtue of its participation in the funding for the works. Title to all such works shall remain with the United States. Upon completion of the works and upon request by an All American Canal Contractor (City of San Diego, Imperial Irrigation District, or Coachella Valley Water District) for transfer of title of the All American Canal, its Coachella Branch, and appurtenant structures below Syphon Drop (including the works constructed pursuant to this section), the Secretary shall, within 90 days, take such necessary action as the Secretary deems appropriate to complete transfer of title to the requesting contractor, according to the contractor's respective interest unless the Secretary determines that such transfer would impair any existing rights of other All American Canal contractors, the rights or obligations of the United States, or would inhibit the Secretary's ability to fulfill his responsibility under the Project Act or other applicable law.

**(e) [Authorization of appropriations.]**—(1) No Federal funds are authorized to be appropriated to the Secretary for construction of the works described in subsection (a)(1) of this section.

(2) The Secretary is authorized to receive funds in advance from one or more Participating Contractors pursuant to the Contributed Funds Act of March 4, 1921 (41 Stat. 1401) under terms and conditions acceptable to the Secretary in order to carry out the Secretary's responsibilities under subsections (a), (b), and (e) of this section. (102 Stat. 4006)

EXPLANATORY NOTE

**Reference in the Text.** The Contributed Stat. 1404) referenced above appears in Volume Funds Act, Act of March 4, 1921(ch. 161, 41, I at page 291.

**Sec. 204. [Use of conserved water.]**—(a) **[Secretarial determination.]**—The Secretary shall determine the quantity of water conserved by the works and may revise such determination at reasonable intervals based on such information as

November 17, 1988

ALL AMERICAN CANAL LINING PROJECT

3645

the Secretary deems appropriate. Such initial determination and subsequent revision shall be made in consultation with the California Contractors.

**(b) [Beneficial use in California.]**—(1) The water identified in subsection (a) of this section shall be made available, subject to the approval requirement established in section 203(c)(3), for consumptive use by California Contractors within their service areas according to their priorities under the Seven Party Agreement.

(2) If the water identified in subsection (a) of this section is used during the term of the funding agreements by (A) a California Contractor other than a Participating Contractor, or (B) by a Participating Contractor in an amount in excess of its proportionate share as measured by the amount of its contributed funds in relation to the total contributed funds, such contractor shall reimburse the Participating Contractors for the annualized amounts of their respective contributions which funded the conservation of water so used, any added costs of operation and maintenance as determined in section 203(b), and related mitigation costs under section 203(a)(2). Such reimbursement shall be based on the costs each Participating Contractor incurs in contributing funds and its total contribution, and the life of the works. (102 Stat. 4008)

**Sec. 205. [Implementation.]**—The authorities contained in this title shall take effect upon enactment and the Secretary is authorized to proceed with all preconstruction activities. For a period not to exceed 15 months thereafter, or such additional period as the Secretary and the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California may agree, the Secretary shall provide to the Imperial Irrigation District the opportunity to become the sole Participating Contractor for the works on the All American Canal from Pilot Knob to Drop 4, and assume all non-Federal obligations to finance the works. After the expiration of the 15-month period or any extension thereto, the Secretary is authorized to enter into agreements with the California Contractors as provided in section 203(c) of this Act.

**Sec. 206. [Protection of existing water uses.]**—As of the effective date of this Act any action of the Secretary to use, sell, grant, dispose, lease or provide rights-of-way across Federal public domain lands located within the All American Canal Service Area shall include the following conditions: (1) those lands within the boundary of the Imperial Irrigation District as of July 1, 1988, as shown in Imperial Irrigation District Drawing 7534, excluding Federal lands without a history of irrigation or other water using purposes; (2) those lands within the Imperial Irrigation District Service Area as shown on General Map of Imperial Irrigation District dated January 1988 (Imperial Irrigation District No. 27F 0189) with a history of irrigation or other water using purposes; and (3) those lands within the Coachella Valley Water District's Improvement District No. 1 shall have a priority for irrigation or other water using purposes over the lands benefitting from the action of the Secretary: *Provided*, That rights to use

November 17, 1988

3646

ALL AMERICAN CANAL LINING PROJECT

water on lands having such priority may be transferred for use on lands having a lower priority if such transfer does not deprive other lands with the higher priority of Colorado River water that can be put to reasonable and beneficial use.

**Sec 207. [Water conservation study.]—(a) [Preparation and transmittal.]**—Any agreement entered into pursuant to section 203 between the Secretary and The Metropolitan Water District of Southern California (hereafter referred to as the "District") shall require, prior to the initiation of construction but in no case later than two years from the date of enactment of this Act, the preparation and transmittal to the Secretary by the District of a water conservation study as described in this section, together with the conclusions and recommendations of the District.

**(b) [Purpose.]**—The purpose of the study required by this section shall be the evaluation of various pricing options within the District's service area, an estimation of demand elasticity for each of the principal categories of end use of water within the District's service area, and the estimation of the quantity of water saved under the various options evaluated.

**(c) [Pricing alternatives.]**—Such study shall include a thorough evaluation of all the pricing alternatives, alone and in various combinations, that could be employed by the District, including but not limited to—

- (1) recovery of all costs through water rates;
- (2) seasonal rate differentials;
- (3) dry year surcharges;
- (4) increasing block rates; and
- (5) marginal cost pricing.

**(d) [Public review and comment.]**—Not less than 90 days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including the transcripts of public hearings which shall be held during the course of the study. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

**(e) [Limitation on initiation of construction.]**—Prior to the initiation of construction, the Secretary shall determine that the requirements of this section have been satisfied. Nothing in this section shall be deemed to authorize the Secretary to require the implementation of any policies or recommendations contained in the study.

**Sec. 208. [Salton Sea National Wildlife Refuge—Reports to Congress.]**—Within 90 days from the date of enactment of this title, the Secretary is directed to prepare and submit a report to the Congress which describes the current condition of habitat at the Salton Sea National Wildlife Refuge, California. The report shall also—

November 17, 1988

ALL AMERICAN CANAL LINING PROJECT

3647

- (1) assess water quality conditions within the refuge;
- (2) identify actions which could be undertaken to improve habitat at the refuge;
- (3) describe the status of wildlife, including waterfowl populations, and how wildlife populations have fluctuated or otherwise changed over the past ten years; and
- (4) describe current and future water requirements of the refuge, the availability of funds for water purchases, and steps which may be necessary to acquire additional water supplies, if needed.

**Sec. 209. [Relation to reclamation law.]**—No contract or agreement entered into pursuant to this title shall be deemed to be a new or amended contract for the purposes of section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1263). (102 Stat. 4010)

EXPLANATORY NOTES

**Codification.** This Act is not codified in the U.S. Code.

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

**Legislative History.** S. 795, Public Law 100-675 in the 100<sup>th</sup> Congress. Reported in

Senate from Indian Affairs; S. Repts. No. 100-47 and No. 100-254. Passed Senate on December 19, 1987. Reported in the House from Interior and Insular Affairs; H.R. Repts. No. 100-780. Considered and passed House, amended on October 3, 4, 1988. Senate concurred in House amendment with an amendment on October 19, 1988. House concurred in Senate amendment on October 20, 1988.

September 29, 1989

3648

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1990**

[Extract from] An Act making appropriations for energy and water development for the fiscal year ending September 30, 1990, and for other purposes. (Act of September 29, 1989, Public Law 101-101, 103 Stat. 641)

\* \* \* \* \*

**Sec. 205.** Section 210 of the Energy and Water Development Appropriations Act of 1988 is hereby deleted in its entirety. (101 Stat. 1329-119; 103 Stat. 667)

EXPLANATORY NOTE

**Reference in the Text.** Section 210 of the Energy and Water Development Appropriations Act of 1988, Act of December 22, 1987 (Public Law 100-202, 101 Stat. 1329-119) provided "(a) The McGee Creek Project of the Bureau of Reclamation shall not be deemed completed until such time as construction of all authorized components of the project are completed, including access roads and

recreation areas.  
(b) The Bureau of Reclamation shall not transfer title of the project to any other entity or require repayment of the project or permit refinancing of the project until such time as the project is completed according to the terms of (a) above." Extracts from the 1988 Act appear in Volume V at page 3559.

\* \* \* \* \*

This Act may be cited as the "Energy and Water Development Appropriations Act, 1990".

EXPLANATORY NOTES

**Not codified.** None of the extracted sections are codified in the U.S. Code.

**Editor's Note, Provisions Repeated in Appropriations 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. 2696, Public Law 101-101 in the 101<sup>st</sup> Congress. Reported in House from Appropriations; H.R. Repts.

No. 101-96 and No. 101-235 (Conference). Passed House June 28, 1989. Reported in Senate from Appropriations; S. Rept. No. 101-83. Passed Senate, amended July 27, 1989. House agreed to conference report; receded and concurred in certain Senate amendments, in others with amendments September 12, 1989. Senate agreed to conference report; concurred in House amendments September 14, 1989.

May 24, 1990

3649

### MISCELLANEOUS AMENDMENTS TO INDIAN LAWS

**[Extract from]** An Act to make miscellaneous amendments to Indian laws, and for other purposes.  
(Act of May 24, 1990, Public Law 101-301, 104 Stat. 206)

\* \* \* \* \*

**Sec. 13. [~~Central Arizona Project power revenues-San Carlos Irrigation Project.~~]**—Notwithstanding the Act of March 7, 1928 (45 Stat. 210-211), and the Act of August 7, 1946 (60 Stat. 895-896), the Secretary of the Interior is authorized to allocate not to exceed \$2,000,000 from power revenues available to the San Carlos Irrigation Project to pay for the operation and maintenance charges associated with the delivery of 30,000 acre-feet of water from the Central Arizona Project to the San Carlos Irrigation Project. (104 Stat. 211)

#### EXPLANATORY NOTES

<b>Not Codified.</b> Section 13 of this Act is not codified in the U.S. Code.	not appear herein.
<b>References in the Text.</b> The Act of March 7, 1928 (45 Stat. 210) does not appear herein.	<b>Legislative History.</b> S. 1846, Public Law 101-301 in the 101 <sup>st</sup> Congress. Reported in the Senate from Indian Affairs; S. Repts. 101-226. Passed Senate May 2, 1990. Passed House May 10, 1990.
The Act of August 7, 1946 (60 Stat. 895) does	

August 10, 1990

3650

## VIRGINIA SMITH DAM AND CALAMUS LAKE RECREATION AREA

An Act to redesignate the Calamus Dam and Reservoir authorized under the Reclamation Project Authorization Act of 1972 as the Virginia Smith Dam and Calamus Lake Recreation Area. (Act of August 10, 1990, Public Law 101-359, 104 Stat. 420; 43 U.S.C. § 615d note. )

**Section 1. [Renaming of Calamus Dam and Reservoir.]**—The Calamus Dam and Reservoir in the North Loup division of the Missouri River basin project shall be known and redesignated as the "Virginia Smith Dam and Calamus Lake Recreation Area".

**Sec. 2. [Legal references to dam and reservoir.]**—Any reference in any law, regulation, document, record, map, or other paper of the United States to the dam and reservoir referred to in section 1 is deemed to be a reference to the "Virginia Smith Dam and Calamus Lake Recreation Area".

**Sec. 3. [Effective date.]**—The provisions of this Act shall be effective on January 3, 1991. (104 Stat. 420, 43 U.S.C. § 615d note.)

### EXPLANATORY NOTES

**Reference in the Text.** Title V of the Reclamation Project Authorization Act of 1972, Act of October 20, 1972 (Public Law 92-514, 86 Stat. 969) referenced in the preamble reauthorized the Calamus Dam. The Calamus, among other features, was initially authorized as part of the North Loup division of the Missouri River basin project by section 9 of the Flood Control Act of December 22, 1944 (ch. 665, 58

Stat. 891). Title V appears in Volume IV at page 2758, and section 9 appears in Volume II at page 806. Amendments and annotations of the 1972 Act appear in Supplement II at page S1030.

**Legislative History.** S. 1875, Public Law 101-359 in the 101<sup>st</sup> Congress. Passed Senate June 12, 1990. Passed House July 31, 1990.

September 28, 1990

3651

## **WATER RESOURCES RESEARCH ACT OF 1984, AMENDMENTS**

An act to extend the authorization of appropriations for the Water Resources Research Act of 1984 through the end of fiscal year 1994. (Act of September 28, 1990 Public Law 101-397, 104 Stat. 852)

**[Section 1. Water research institutes.]**—(a) Section 103(5) of the Water Resources Research Act of 1984 (42 U.S.C. § 10302(5)) is amended by deleting "coordinate more effectively" and inserting in lieu thereof: "to promote more effective coordination of".

(b) Section 104(a) of the Water Resources Research Act of 1984 (42 U.S.C. 10303(a)) is amended by changing "Trust Territory of the Pacific Islands" to "Federated States of Micronesia".

(c) Section 104(b) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(b)) is amended by inserting in the last sentence after the phrase "for the purpose of" the following: "promoting".

(d) Section 104(b)(1) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(b)(1)) is amended to read as follows:

"(1) plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists, engineers, and technicians, (c) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and".

(e) Section 104(c) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(c)) is amended by deleting the period at the end thereof and inserting in lieu thereof "and thereafter, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program."

(f) Section 104(e) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(e)) is amended to read as follows:

"(e) The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 5 years to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting, and arranging for research warrants its continued support under this section. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualifications are reestablished to the satisfaction of the Secretary."

(g) Section 104(f)(1) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(f)(1)) is amended by deleting "September 30, 1985, through

September 28, 1990

3652 WATER RESOURCES RESEARCH ACT OF 1984

September 30, 1989" and inserting in lieu thereof "September 30, 1989, through September 30, 1995,".

(h) Section 104(f)(2) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(f)(2)) is amended by deleting "section 106 of this Act" and inserting in lieu thereof "section 104(g) of this Act".

(i) Section 105(a)(3) of the Water Resources Research Act of 1984 (42 U.S.C. § 10304(a)(3)) is repealed.

(j) Section 105(c) of the Water Resources Research Act of 1984 (42 U.S.C. § 10304(c)) is amended by:

- (1) striking "\$20,000,000" and inserting in lieu thereof, "\$10,000,000"; and
- (2) striking "1989" and inserting in lieu thereof, "1995".

(k) Section 108(6) of the Water Resources Research Act of 1984 (42 U.S.C. § 10307(6)) is amended by inserting immediately after "depletion" a comma and the word "contamination,".

(l) Section 108(8) of the Water Resources Research Act of 1984 (42 U.S.C. § 10307(8)) is amended by inserting immediately after "water" the words "quality and quantity".

(m) Section 104 of the Water Resources Research Act of 1984 (42 U.S.C. § 10303) is amended by adding the following:

"(g)(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of \$5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995 only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which relate to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

"(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals."

(n) Section 106 of the Water Resources Research Act of 1984 (42 U.S.C. § 10305) is amended to read as follows:

"Sec. 106. [Grants—Matching funds.]—(a)(1) The Secretary shall make grants in addition to those authorized under sections 104 and 105 for technology development concerning any aspect of water resources including water-related technology which the Secretary may deem to be of State, regional, or national importance. Activities funded under this section may be carried out by educational institutions, private firms, foundations, individuals,

September 28, 1990

WATER RESOURCES RESEARCH ACT OF 1984

3653

or agencies of State or local government. Care shall be taken to protect proprietary information of private individuals or firms associated with the technology.

"(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the information transfer and technology needs of the Nation. However, in the case of institutes established by section 104 of this Act no match greater than that required under section 104 may be required.

"(b) Each application for a grant under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, facilities of the organization performing any technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued.

"(c) There is authorized to be appropriated to the Secretary the sum of \$6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1990, through September 30, 1995; such sums to remain available until expended."

(o) Section 309(a) of the Water Resources Research Act of 1984 (42 U.S.C. § 10301 *et al.*), as amended, is further amended by deleting "1991" and inserting in lieu thereof "1995". (104 Stat. 852; 42 U.S.C. § 10301 note.)

EXPLANATORY NOTE

**Reference in the Text.** The Water Resources Research Act of 1984, Act of March 22, 1984 (Public Law 98-242, 98 Stat. 97; 42 U.S.C. § 10301 *et seq.*) as amended by this Act and the Act of May 24, 1996, (Public Law 104-147, 110 Stat. 1375) appears in Volume V at page 3381.

**Sec. 2. [Contracts or cooperative agreements with the United States—Rules and Regulations—Appropriations.]—**(a) The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, is authorized to enter into contracts or cooperative agreements, as the Secretary deems appropriate, with national laboratories (including Los Alamos National Laboratory) to carry out water resources research, development, and demonstration projects within the authorities of Public Law 98-242 (including the effects of potential climate changes on surface and ground water quality and quantity and the elimination of contamination of ground water aquifers).

(b) The water resources research authorized in this section shall be undertaken under such rules and regulations as the Secretary deems appropriate and shall be carried out in close consultation and collaboration with the institutes established pursuant to Public Law 98-242, to the extent such research work affects the State in which the institute exists, and to the extent such institute

September 28, 1990

3654 WATER RESOURCES RESEARCH ACT OF 1984

agrees to consult and collaborate.

(c) For the purposes of carrying out this section, there is authorized to be appropriated to the Secretary of the Interior the sum of \$10,000,000 for each of the fiscal years 1991 through 1995. (104 Stat. 854, 42 U.S.C. § 10303 note.)

EXPLANATORY NOTE

**Legislative History.** H.R. 1101, Public Law 101-397 in the 101<sup>st</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 101-76. Passed House June 6, 1989. Passed Senate, amended August 1, 1990. House concurred in Senate amendment September 11, 1990.

October 18, 1990

3655

## **RIO GRANDE AMERICAN CANAL EXTENSION ACT OF 1990**

An Act to provide for the construction, operation, and maintenance of an extension of the American Canal at El Paso, Texas. (Act of October 18, 1990, Public Law 101-438, 104 Stat. 1001)

**Section 1. [Short title.]**—This Act may be cited as the "Rio Grande American Canal Extension Act of 1990".

**Sec. 2. [Findings.]**—The Congress finds the following: (1) The Riverside Dam on the international reach of the Rio Grande River at El Paso, Texas, provides the water used to irrigate nearly 32,000 acres of farmland in the United States.

(2) In June 1987, the Riverside Dam failed, and the temporary replacement structure now in place on the river cannot be relied upon to guarantee the continued provision of these waters to the United States.

(3) Building a permanent structure in an international reach of the Rio Grande would require the conditional approval of the Government of Mexico through an action of the International Boundary and Water Commission, United States and Mexico, and Mexico could use such structure to divert waters to its own land.

(4) The United States constructed the American Dam completely in United States territory to ensure that waters from the American Canal would be completely retained within the United States up to a point below Mexico's diversion at the International Dam.

(5) Potentially disruptive international issues might arise from the commingling of the waters of the United States and the waters of Mexico in this reach of the Rio Grande, while such issues would not arise if a canal extension were constructed and operated wholly on the American side of the river.

(6) The construction and operation of an extension of the American Canal which would lie wholly in the United States would provide for a more equitable distribution of waters between the United States and Mexico, reduce water losses, and eliminate many hazards to public safety. (104 Stat. 1001)

**Sec. 3. [Construction of canal extension, operation, maintenance, and use.]—(a) [Construction of extension.]**—Subject to subsection (e), the Secretary shall construct an extension of the American Canal, together with pumping plants, wasteways, measuring devices, and other facilities needed to connect such extension with existing irrigation systems. Such extension shall lie wholly in the United States and shall be approximately 13 miles in length, beginning at the downstream end of the current American Canal in El Paso, Texas, and extending to Riverside Heading.

October 18, 1990

3656 RIO GRANDE AMERICAN CANAL EXTENSION ACT

**(b) [Operation of canal.]—(1) [In general—Contracts.]**—Except as provided in paragraph (2), the Secretary shall operate the extension of the American Canal provided for in subsection (a).

**(2) [Delivery of waters.]**—The Secretary shall enter into an agreement with El Paso County Water Improvement District Number 1 pursuant to which the Water Improvement District would be responsible for the operation of the American Canal with respect to the delivery of all waters, with the exception of those waters belonging to Mexico which, consistent with paragraph (3), the Secretary shall be responsible for delivering.

**(3) [United States obligations under 1906 and 1933 Conventions.]**—In authorizing the agreement described in paragraph (2), this Act—

(A) does not in any way affect the jurisdiction, powers, or prerogatives of the International Boundary and Water Commission, United States and Mexico, and

(B) does not in any way impede the ability of the United States Government to fulfill its obligations under the 1906 and 1933 Conventions.

**(c) [Use of canal as conveyance channel.]—(1) [Use by Mexico.]**—The Secretary may enter into an agreement with Mexico which permits Mexico to use the American Canal as a conveyance channel. Any such agreement shall require Mexico to make payments to the United States for Mexico's use of the American Canal.

**(2) [Use by non-Federal entities.]**—Upon obtaining the express approval of the Secretary, El Paso County Water Improvement District Number 1 may enter into agreements with other non-Federal entities pursuant to which such entities may use the American Canal as a conveyance channel.

**(d) [Maintenance of extension.]**—The Secretary shall maintain the extension of the American Canal provided for in subsection (a).

**(e) [Local contributions to costs.]**—The extension of the American Canal provided for in subsection (a) may not be constructed unless the Secretary and El Paso County Water Improvement District Number 1 have entered into the following agreements:

**(1) [Construction costs.]**—An agreement pursuant to which El Paso County Water Improvement District Number 1 will pay \$5,000,000 as its share of the construction costs for the construction of the extension of the American Canal provided for in subsection (a).

**(2) [Maintenance costs.]**—An agreement pursuant to which El Paso County Water Improvement District Number 1 will contribute a cumulative amount of \$50,000 each year to the United States Commissioner as its share of the costs for maintenance of the extension of the American Canal provided for in subsection (a). After the 7-year anniversary of the completion of the construction of that extension (and after the end of each 7-year interval since the last such renegotiation), the Secretary and the El Paso County Water Improvement District Number 1 may renegotiate the amount of the contribution of El Paso County Water Improvement District Number 1

October 18, 1990

RIO GRANDE AMERICAN CANAL EXTENSION ACT 3657

pursuant to the agreement required by this paragraph in order to reflect any increase in Bureau of Labor Statistics Consumer Price Index-Urban Wage Earners and Clerical Workers (CPI-W)-1982-84-100 Index. In the event the funds contributed by the El Paso County Water Improvement District Number 1 pursuant to this paragraph are not utilized during any given year, the funds shall be carried over to the succeeding years in a contingency fund for necessary preventative and routine maintenance work to be performed by the United States Section, International Boundary and Water Commission.

**(f) [Repeal of previous construction authorization.]**—Title IV of the Act entitled "An Act to authorize various Federal reclamation projects and programs, and for other purposes", approved September 28, 1976 (Public Law 94-423; 90 Stat. 1327), is repealed. (104 Stat. 1001)

EXPLANATORY NOTE

**Reference in the Text.** Title IV of the Act IV at page 2955 and in Supplement II at page of September 28, 1976, Public Law 94-423 (90 S1056. Stat. 1327) referenced above appears in Volume

**Sec. 4. [Study of subsidence damage.]**—The Secretary—

(1) shall conduct a study to determine the likelihood and extent of any damage to property adjacent to the American Canal which would be caused by subsidence related to the Canal extension provided for in section 3(a), and

(2) shall submit a report to the Congress detailing his findings not later than 1 year after the date of the enactment of this Act. (104 Stat. 103)

**Sec. 5. [Authorization of appropriations.]**—There are authorized to be appropriated—

(1) \$42,000,000 to construct the extension of the American Canal provided for in section 3(a); and

(2) such sums as may be necessary to operate and maintain that extension and to conduct the study required by section 4.

**Sec. 6. [Definitions.]**—As used in this Act—

(1) the term "American Canal" means the Rio Grande American Canal constructed pursuant to the Act of August 29, 1935 (49 Stat. 961);

(2) the term "United States Commissioner" means the United States Commissioner, International Boundary and Water Commission, United States and Mexico; and

(3) the term "Secretary" means the Secretary of State, acting through the United States Commissioner. (104 Stat. 1003)

October 18, 1990

3658 RIO GRANDE AMERICAN CANAL EXTENSION ACT

EXPLANATORY NOTES

**Not Codified.** This Act is not codified in the U.S. Code. at page 536.

**Reference in the Text.** The Act of August 29, 1935, referenced above appears in Volume I

**Legislative History.** H.R. 4758, Public Law 101-438 in the 101<sup>st</sup> Congress. Passed House June 12, 1990. Passed Senate October 4, 1990.

November 5, 1990

3659

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1991**

An Act making appropriations for energy and water development for the fiscal year ending September 30, 1991, and for other purposes. (Act of November 5, 1990, Public Law 101-514, 104 Stat. 2074)

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TITLE II

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

\* \* \* \* \*

CONSTRUCTION PROGRAM

\* \* \* \* \*

**[Safety of dams work at Coolidge Dam, San Carlos Irrigation Project.]**—All costs of the safety of dams modification work at Coolidge Dam, San Carlos Irrigation Project, Arizona, performed under the authority of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. § 506), as amended, are in addition to the amount authorized in section 5 of said Act. (104 Stat. 2083)

EXPLANATORY NOTE

**Reference in the Text.** The Reclamation Safety of Dams Act of 1978, Act of November 2, 1978 (Public Law 95-578, 92 Stat. 2471; 43 U.S.C. § 506) referenced above appears in Volume IV at page 3127. The 1978 Act was amended by the Act of August 28, 1984 (Public Law 98-404, 98 Stat. 1481). The 1984 Act appears in Volume V at page 3421. Extracts from the 1978 Act, as amended, appear in Supplement II at page S1068.

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November 5, 1990

3660 ENERGY AND WATER APPROPRIATIONS ACT, 1991

GENERAL PROVISIONS

DEPARTMENT OF THE INTERIOR

\* \* \* \* \*

**Sec. 205. (a) [McGee Creek Authority, Oklahoma—Authorization.]**—The Secretary is authorized and directed to enter into a contract with the McGee Creek Authority, Oklahoma City, Oklahoma, accepting a payment in an amount to be determined by the Secretary after appropriate investigation.

**(b) [Contract termination.]**—Upon receipt of the payment specified in subsection (a), the McGee Creek Water Authority's obligation under contract between the Authority and the Secretary numbered 0-07-50-XO822, dated October 11, 1979, shall be terminated.

**(c) [Title to project facilities.]**—Notwithstanding any payments made by the McGee Creek Water Authority pursuant to section 205 (a) and (b) of this language or pursuant to any contract with the Secretary, title to project facilities of the McGee Creek Project, Oklahoma, shall remain with the United States.

**Sec. 206. (a) [Central Valley Project, California — Water supply contracts.]**—Except as provided in subsection (b) of this section, none of the funds appropriated in this or any other Act shall be used to execute new long-term contracts for water supply from the Central Valley Project, California.

(b)(1) The Secretary of the Interior is authorized and directed to enter into the following contracts:

(A) a municipal and industrial water supply contract with the Sacramento County Water Agency, not to exceed 22,000 acre-feet annually, to meet the immediate needs of Sacramento County and a municipal and industrial water supply contract with the San Juan Suburban Water District, not to exceed 13,000 acre-feet annually, for diversion from Folsom Lake, with annual quantities delivered under these contracts to be determined by the Secretary based upon the quantity of water actually needed within the Sacramento County Water Agency service area and San Juan Suburban Water District after considering reasonable efforts to:

- (i) promote full utilization of existing water entitlements within Sacramento County,
- (ii) implement water conservation and metering programs within the areas served by the contract, and
- (iii) implement programs to maximize to the extent feasible conjunctive use of surface water and groundwater; and

(B) a municipal and industrial water supply contract with the El Dorado County Water Agency, not to exceed 15,000 acre-feet annually, for diversion from Folsom Lake or for exchange upstream on the American River or its tributaries, considering reasonable efforts to implement water

November 5, 1990

ENERGY AND WATER APPROPRIATIONS ACT, 1991 3661

conservation programs within areas to be served by the contracts. The contracts required by this subsection are intended as the first phase of a contracting program to meet the long-term water supply needs of Sacramento and El Dorado Counties. The Secretary shall promptly initiate the necessary analysis for the long-term water supply contracts. The Secretary shall include in these contracts terms and conditions to ensure that the contracts may be amended in any respect required to meet the Secretary's obligations under applicable State law and the Federal environmental laws.

(2) Prior to entering into the contracts specified in subsection (b)(1) of this section, the Secretary is directed to comply with the provision of the National Environmental Policy Act by preparing joint Environmental Impact Statements and California Environmental Quality Act Environmental Impact Reports. The Sacramento County Water Agency shall be the joint lead agency with the Bureau of Reclamation in the preparation of the environmental documents required under (b)(1)(A) of this section and the El Dorado County Water Agency shall be the joint lead agency with the Bureau of Reclamation in the preparation of the environmental documents required under (b)(1)(B), with the Bureau of Reclamation cooperating in all aspects of the environmental review process, but not controlling that process.

(3) Diversions from the American River under the contract for the Sacramento County Water Agency shall, to the maximum extent reasonable and feasible, take place at or near the mouth of the American River. (104 Stat. 2087)

**Sec. 207. [Island Park Dam and Reservoir, Minidoka Project, Idaho,--Hydroelectric Power Development, Fall River Rural Electric Cooperative.]**—The Secretary of the Interior is authorized and directed to pay, without reimbursement, \$1,000,000 to the Fall River Rural Electric Cooperative in reimbursement for environmental protection requirements in connection with the development of hydroelectric power at the Island Park Dam and Reservoir, Idaho. Such payment shall be made on the date the hydroelectric electric power facilities are placed in service and shall not affect cost allocations or repayment provisions for the Minidoka Project. (104 Stat. 2088)

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November 5, 1990

3662 ENERGY AND WATER APPROPRIATIONS ACT, 1991

TITLE III

DEPARTMENT OF ENERGY

\* \* \* \* \*

POWER MARKETING ADMINISTRATIONS

\* \* \* \* \*

CONSTRUCTION, REHABILITATION OPERATION AND MAINTENANCE,  
WESTERN AREA POWER ADMINISTRATION

\* \* \* \* \*

**[Incremental power purchase costs shall be nonreimbursable.]—*Proviso, Repealed.***

EXPLANATORY NOTE

**Proviso Repealed.** The Act of September 30, 1996 (Public Law 104-206, 110 Stat. 2984) amended this Act, effective September 30, 1997 or upon operation of the temperature control device, by striking the proviso under the heading "Construction, Rehabilitation, Operation and Maintenance, Western Area Power Administration". Prior to amendment, the proviso read "That in the operation of

Shasta Dam, Central Valley Project, California, any increase in power purchase costs incurred by the Western Area Power Administration after January 1, 1986, resulting from bypass releases for temperature control purposes to preserve anadromous fisheries in the Sacramento River shall be nonreimbursable." Extracts from the 1996 Act appears in Volume V at page 4083.

This Act may be cited as the "Energy and Water Development Appropriations Act, 1991".

EXPLANATORY NOTES

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

**Editor's Note, Provisions Repeated in Appropriation Acts.** Provisions which are repeated in two or more appropriations acts appear herein only in the act in which first used.

**Legislative History.** H.R. 5019, Public Law 101-514 in the 101<sup>st</sup> Congress. Reported in the House from the Appropriations; H.R. Rept. No. 101-536 and H.R. Rept. No. 101-889

(Conference). Considered and passed the House on June 19, 1990. Reported in Senate from Appropriations; S. Rept. No. 101-378. Considered and passed Senate, amended on Aug. 1, 2, 1990. House agreed to conference report; receded and concurred in certain Senate amendments, in others with amendments. Senate agreed to conference report; concurred in House amendments on October 19, 1990.

November 16, 1990

3663

## **FORT HALL INDIAN WATER RIGHTS ACT OF 1990**

An Act to approve the Fort Hall Indian Water Rights Settlement, and for other purposes. (Act of November 16, 1990, Public Law 101-602, 104 Stat. 3059)

**Section 1. [Short title.]**—This Act may be cited as the "Fort Hall Indian Water Rights Act of 1990".

**Sec. 2. [Definitions.]**—For the purposes of this Act, and for no other purposes—

(1) The term "Agreement" means the "1990 Fort Hall Indian Water Rights Agreement" between the State of Idaho, the Shoshone-Bannock Tribes, the United States, and other participating parties.

(2) The term "Committee of Nine" means the advisory committee of water district 01, which is the instrumentality created by the Director of the Idaho Department of Water Resources pursuant to Idaho Code 42-604.

(3) The term "Final Decree" means the partial decree confirming the Tribal water rights described and quantified in Article 7 of the Agreement to be entered after the date of enactment of this Act and following submission of the Agreement as provided for in Article 10 of the Agreement in Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled "In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System."

(4) The term "Fort Hall Indian Irrigation Project" means the Federal project constructed to provide water for the irrigation of Reservation lands and certain ceded lands.

(5) The term "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Constitution Article XV, section 7, or any successor agency.

(6) The term "Indian" means any person who is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; is recognized as an Indian under tribal law; or holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.

(7) The term "Indian lands" means (A) all lands within the exterior boundaries of the Reservation that are held in trust or owned for the Shoshone-Bannock Tribes or an Indian, and (B) those lands outside the exterior boundaries of the Reservation held in trust for or owned by the Shoshone-Bannock Tribes or held in trust for or owned subject to a restriction on alienation by a member of the Shoshone-Bannock Tribes.

(8) The term "Michaud Act" means the Act of August 31, 1954, chapter 1159, 68 Stat. 1026.

November 16, 1990

3664 FORT HALL INDIAN WATER RIGHTS ACT OF 1990

(9) The term "Michaud Contract" means that Memorandum Agreement of April 25, 1957, between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply for the Michaud Division.

(10) The term "Michaud Division" means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, chapter 1159, 68 Stat. 1026.

EXPLANATORY NOTE

**References in the text.** Michaud Flats Contract are amended by subsection 6(e) of this Project Act, Act of August 31, 1954 (ch. 1159, Act to the extent necessary to authorize uses in 68 Stat. 1026) referenced above appears in subsections (a), (b), and (c) of the proprietary Volume II at page 1205. The Act and the rights described in article 7 of the Agreement.

(11) The term "Party" or "Parties" means any entity or entities that are party to the Agreement.

(12) The term "Reservation" means the Fort Hall Indian Reservation.

(13) The term "Secretary" means the Secretary of the Interior.

(14) The term "Tribes" or "Tribal" means the Shoshone-Bannock Tribes, its members, and its allottees.

(15) The term "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the 3 dams authorized as FERC Project No. 1971. (104 Stat. 3059)

**Sec. 3. [Findings.]**—The purpose of the Fort Hall Indian Water Rights Settlement Act of 1990 is to achieve a fair, equitable, and final settlement of all claims of the Shoshone-Bannock Tribes, its members, and its allottees and the United States on behalf of the Shoshone-Bannock Tribes, its members, and its allottees to water rights in the Upper Snake River Basin. (104 Stat. 3060)

**Sec. 4. [Ratification of agreement.]**—The Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to implement the Agreement on behalf of the United States. (104 Stat. 3060)

**Sec. 5. [Protection of existing uses.]—(a) [Contract for storage space.]**—The Secretary is authorized and directed to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for 18,900 acre feet of storage space in the Palisades Reservoir and the 80,500 acre feet of storage space in the Ririe Reservoir provided that the contracting entity makes application for the noncontracted storage space within 1 year of the date of this Act and the contracting party agrees to pay all operation and maintenance costs associated with the space. The repayment obligation associated with the construction costs for such noncontracted storage space is hereby deemed repaid by this Act. All exemptions that result from such a repayment shall be deemed to be applicable without further qualification on the part of such contracting entity, and with

November 16, 1990

FORT HALL INDIAN WATER RIGHTS ACT OF 1990 3665

respect to subsequent users of this water, the Reclamation laws shall apply only to the extent such laws would have applied to such subsequent users prior to the date of this Act.

**(b) [Limitation on setting aside final decree.]**—Neither the Committee of Nine nor the State shall have the right to set aside the Final Decree because either fails to make application for the storage space referred to in subsection (a) of this section within 1 year of the date of this Act. (104 Stat. 3060)

**Sec. 6. [Use, transfer, and lease of tribal water rights.]—(a) [Transfer and lease of tribal water rights within the reservation.]**—The Tribes shall have the right to transfer or lease within the Reservation all or any part of the Tribal water right confirmed in the Final Decree on the terms and conditions set forth in article 7 of the Agreement.

**(b) [Rental of the Tribes' Federal contract storage water.]**—The Tribes shall have the right to rent, pursuant to Idaho Code 421761 through 42-1765 as specified in article 7 of the Agreement, the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act.

**(c) [Instream flows.]**—The Tribes shall have the right to use any or all of the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act for instream flows for river reaches on or adjacent to the Reservation and up to 15,000 acre feet per year of the storage water rights described in articles 7.1.19 and 7.1.20 of the Agreement for instream flows in reaches of the Blackfoot River on the terms and conditions set forth in article 7.4 of the Agreement.

**(d) [Requisite congressional approval.]**—Ratification of the Agreement as provided for by section 4 of this Act shall constitute the congressional approval, to the extent it is required by Federal law, of the uses described in subsections (a), (b), and (c) of this section.

**(e) [Amendment of Michaud Act and Contract.]**—The Michaud Act and the Michaud Contract are hereby amended to the extent necessary to authorize the uses described in subsections (a), (b), and (c) of the proprietary rights described in article 7 of the Agreement.

**(f) [No alienation or taxation of proceeds.]**—The proceeds from leasing water pursuant to subsection (a) of this section or from renting all or any part of the water accruing to the Federal contract storage space pursuant to subsection (b) of this section shall not be subject to any form of taxation or alienation by the State.

**(g) [No forfeiture, abandonment, loss, or constraints on income.]**—The Tribes' exercise of the rights described in subsections (a), (b), and (c) of this section or nonuse of the Tribal water rights shall in no event be construed or interpreted as any forfeiture, abandonment, relinquishment, or other loss of all or any part of the Tribal water rights. Nor shall the exercise of the rights described in subsections (a) and (b) of this section be subject to any constraints on the amount of income or other compensation received by the Tribes.

November 16, 1990

3666 FORT HALL INDIAN WATER RIGHTS ACT OF 1990

**(h) [Limitation on off-reservation use.]**—Except as authorized by this section, no Tribal water rights or water described in the Agreement may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation. (104 Stat. 3061)

**Sec. 7. [Contribution to Settlement.]—(a) [Tribal Development Fund.]**—There are hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs \$4,000,000 in the first fiscal year, \$3,000,000 in the second fiscal year, and \$3,000,000 in the third fiscal year following the effective date of this Act for payment to the Tribal Development Fund, which the Secretary is authorized and directed to establish for the Shoshone-Bannock Tribes. Within 60 days of appropriation of moneys for the Tribal Development Fund, the Secretary shall allocate and make payment to the Fund. Once the funds are deposited into the Tribal Development Fund, the Secretary shall disburse the funds to the Tribes upon request.

**(b) [Reservation water management system.]**—There is hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs the sum of \$3,000,000 in the first fiscal year, \$2,000,000 in the second fiscal year, and \$2,000,000 in the third fiscal year following the effective date of this Act for use by the Tribes for development of a Reservation water management system. Within 60 days of appropriation of moneys for the Reservation water management system, the Secretary shall allocate and make payment to the Tribes for the purposes described in this section.

**(c) [Acquisition of lands, grazing rights, and improvements.]**—There are hereby authorized to be appropriated to the Department of the Interior Bureau of Indian Affairs \$5,000,000 for the primary purposes of acquiring for the Fort Hall Indian Irrigation Project available lands and grazing rights adjacent to Grays Lake to enhance the operation and management of the project and of making related improvements as well as providing collateral benefits for the operation of the Fish and Wildlife Service Refuge at Grays Lake.

**(d) [Limitation on per capita distributions.]**—Under no circumstances may any appropriated funds authorized by subsections (a), (b), and (e) of this section be distributed on a per capita basis to members of the Tribes.

**(e) [Limitation on setting aside final decree.]**—Neither the Tribes nor the United States shall have the right to set aside the Final Decree because Congress fails to appropriate the funds authorized by subsection (a), (b), or (c) of this section or because the United States fails to acquire the grazing allotments adjacent to Grays Lake.

**(f) [Trust responsibility.]**—Nothing in this Act shall be construed or interpreted to alter the future trust responsibility of the United States to the Tribes nor to prohibit the Tribes from seeking additional authorization or appropriation of funds for Tribal programs or purposes. (104 Stat. 3061)

November 16, 1990

FORT HALL INDIAN WATER RIGHTS ACT OF 1990 3667

**Sec. 8. [Waiver of claims.]—(a) [General authority.]**—Upon the effective date of the Agreement, the Tribes and the United States shall be deemed to have waived and released any and all water rights or claims to water rights of the Tribes, its members and its allottees from any source within the Upper Snake River Basin other than those set forth in article 7 of the Agreement. This release shall not apply to water right claims under State law of Tribal members for lands not defined as Indian lands for purposes of this Act nor to any other Indian tribe or to any Federal agency other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

**(b) [Waiver of claims against the United States.]**—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the congressional authorization, appropriation, and payment of all funds authorized in section 7 of this Act, the Tribes shall be deemed to have executed in return a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by the Agreement and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

**(c) [Waiver of claims against non-Federal persons.]**—Upon entry of the Final Decree confirming the Tribal water rights, the United States and the Tribes agree not to make any claims against, or seek compensation from, any non-Federal person for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir. In the event funds are not paid as set forth in section 7, the Tribes are authorized to bring an action in the United States Claims Court for such funds plus applicable interest. The United States hereby waives any defense of sovereign immunity to such action. (104 Stat. 3062)

**Sec. 9. [Individual members and allottees of the Tribes.]**—The water rights described in the Agreement and confirmed in the Final Decree are in full satisfaction of all water right claims of members of the Tribes and allottees for Indian lands in the Upper Snake River Basin. If any Tribal member or allottee is decreed a water right for Indian lands in Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled "In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System", there shall be a corresponding reduction made in the Tribal water rights set forth in the Agreement and the Final Decree. (104 Stat. 3063)

**Sec. 10. [Effective date.]—(a) [Disbursement of funds upon effective date.]**—The moneys appropriated pursuant to the authorization in section 7 of this Act shall not be disbursed until such time as the Agreement becomes effective. If the Agreement does not become effective, the moneys shall be returned to the General Fund of the Treasury, and the Agreement may be voided by any party to the Agreement.

November 16, 1990

3668 FORT HALL INDIAN WATER RIGHTS ACT OF 1990

**(b) [Force and effect.]**—No provision of this Act shall be of any force unless the Agreement becomes effective as provided by article 18 of the Agreement.

**Sec. 11. [Disclaimer.]—(a)[General disclaimer.]**—Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights or water right claims of the city of Pocatello, Idaho, or of any Indian tribe, band, or community, other than the Shoshone-Bannock Tribes.

**(b) [Reservation of tribal claims.]**—Nothing in this Act shall be construed to waive any water rights or water right claims of the Tribe or the United States on behalf of the Tribes except as set forth in the Agreement. Nor shall anything in the Agreement or this Act affect the water rights or water right claims of any Federal agency, other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

**(e) [Reservation of rights.]**—The parties expressly reserve all rights not granted, recognized, or settled by the Agreement or this Act.

**(d) [Disclaimer regarding other agreements.]**—Except as expressly provided in this Act, nothing herein shall be considered to amend, construe, supersede, or preempt any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River or its tributaries. (104 Stat. 3063)

**Sec. 12. [Protection of tribal water rights.]**—The Tribal water rights confirmed by the Final Decree shall bind and inure to the benefit of the Tribes and shall not be taken from them absent their consent and payment of just compensation. (104 Stat. 3064)

EXPLANATORY NOTES

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

**Legislative History.** H.R. 5308, Public Law 101-602 in the 101<sup>st</sup> Congress. Reported in the

House from Interior and Insular Affairs; House Reports No. 101-831. Passed the House on October 10, 1990. Passed the Senate on October 27, 1990.

November 16, 1990

3669

**FALLON PAIUTE SHOSHONE INDIAN TRIBES WATER RIGHTS  
SETTLEMENT ACT OF 1990; TRUCKEE-CARSON-PYRAMID LAKE  
WATER RIGHTS SETTLEMENT ACT**

An Act to provide for the settlement of water rights claims of the Fallon Paiute Shoshone Indian Tribes and for other purposes. (Act of November 16, 1990, Public Law 101-618, 104 Stat. 3289)

**TITLE I-FALLON PAIUTE SHOSHONE TRIBAL  
SETTLEMENT ACT**

**Sec. 101. [Short title.]**—This Act may be cited as the "Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990".

**Sec. 102. [Settlement Fund.]**—(A) There is hereby established within the Treasury of the United States, the "Fallon Paiute Shoshone Tribal Settlement Fund", hereinafter referred to in the Act as the "Fund".

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund \$3,000,000 in fiscal year 1992, and \$8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996, and 1997 for a total sum of \$43,000,000.

(C)(1) The income of the Fund may be obligated and expended only for the following purposes:

- (a) Tribal economic development, including development of long-term profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as "Tribes") and its tribal members, and the development of employment opportunities for tribal members;
- (b) Tribal governmental services and facilities;
- (c) Per capita distributions to tribal members;
- (d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as "Reservation") not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 455;

EXPLANATORY NOTE

**Reference in the Text.** Public Law 95-337, herein.  
92 Stat. 455) referenced above does not appear

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States.

November 16, 1990

3670 FALLON PAIUTE SHOSHONE TRIBES WATER RIGHTS

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(D) The Tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section.

(E) Upon the request of the Tribes, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. § 162a, as amended. All income earned on such investments shall be added to the Fund.

EXPLANATORY NOTE

**Reference in the Text.** The Act of June 14, 1938 (52 Stat. 1037) referenced above does not appear herein.

(F)(1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the

November 16, 1990

FALLON PAIUTE SHOSHONE TRIBES WATER RIGHTS 3671

Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, 25 U.S.C. § 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section. (104 Stat. 3289)

EXPLANATORY NOTE

**References in the Text.** Public Law 93-134 (87 Stat. 468) and Public Law 97-458 (96 Stat. 2513) do not appear herein.

**Sec. 103. [Acquisition and use of lands and water rights.]**—(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(B) Any lands acquired under section 102(C)(1)(e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

EXPLANATORY NOTE

**Reference in the Text.** The Act of October 17, 1988 (102 Stat. 2485) does not appear herein.

(C)(1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

November 16, 1990

3672 FALLON PAIUTE SHOSHONE TRIBES WATER RIGHTS

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (A) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(F)(1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(a) Consolidating Reservation landholdings or water rights, including those held in trust;

(b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;

(c) Providing land or water rights for any tribal program;

(d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(e) General rehabilitation and enhancement of the total resource potential of the Reservation: *Provided*, That any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights, or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes. (104 Stat. 3290)

**Sec. 104. [Release of claims.]**—(A)(1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met—

November 16, 1990

FALLON PAIUTE SHOSHONE TRIBES WATER RIGHTS 3673

(a) the Tribes have released any and all claims they may have against the United States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat.457;

(b) the Tribes have dismissed with prejudice their claims in Northern Paiute Nation v. United States, Docket No. 87-A, United States Claims Court;

(c) the Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in Pyramid Lake Paiute Tribe of Indians v. Lujan, No. R-85-197 (D. Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismissal shall not prejudice in any respect the Tribes' right to object in any administrative or judicial proceeding to such Operating Criteria and Procedures, or any revisions thereto, or to assert that any Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements;

(e) the Tribes agree to be bound by a plan developed and implemented by the Secretary in accordance with section 106 of this title; and

(f)(1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this title effect an unlawful taking of their rights: *Provided, That*—

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the Tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights.

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act

November 16, 1990

3674 FALLON PAIUTE SHOSHONE TRIBES WATER RIGHTS

have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed. (104 Stat. 3292)

**Sec. 105. [Liability of the United States.]**—(A) Except with regard to the responsibilities assumed by the United States under section 102(E), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U.S.C. § 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

EXPLANATORY NOTE

**Reference in the Text.** The Act of February 12, 1929 (45 Stat. 1164) referenced above does not appear herein.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act. (104 Stat. 3293)

**Sec. 106. [Plan for the closure of TJ Drain.]**—(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

**Sec. 107. [Definitions.]**—For purposes of this title, and for no other purposes—(A) the term "Fallon Paiute Shoshone Tribal Settlement Fund" or "Fund" means the Fund established under section 102(A) of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this title;

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3675

(B) the term "income" means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income;

(C) the term "Principal" means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act;

(D) the term "Reservation" means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457;

(E) the term "Secretary" means the Secretary of the Department of the Interior;

(F) the term "tribal members" means the enrolled members of the Fallon Paiute Shoshone Tribes; and

(G) the term "Tribe" means the Fallon Paiute-Shoshone Tribe. (104 Stat. 3294)

TITLE II—TRUCKEE-CARSON-PYRAMID LAKE  
WATER SETTLEMENT

**Sec. 201. [Short title.]**—This title may be cited as the "Truckee-Carson-Pyramid Lake and Water Rights Settlement Act".

**Sec. 202. [Purposes: fish—wildlife—business and industry—irrigation—recreation and recreation areas.]**—The purposes of this title shall be to—  
(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims,

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

**Sec. 203. [Definitions.]**—For purposes of this title: (a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in *United States of America v. Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

November 16, 1990

3676 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

(c) the term "Carson River basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al. in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appendix 1 to the Committee's report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cui-ui (*Chasmistes cujus*) and the Lahontan cutthroat trout (*Salmo clarki henshawi*);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3677

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in *United States of America v. Truckee River General Electric Co.*, No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948. (104 Stat. 3294)

**Sec. 204. [Interstate allocation.]—(a) [Carson River.]—(1)** The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per year by depletion for use in the State of California and 2,131 acre-feet per year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

November 16, 1990

3678 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year. (104 Stat. 3296)

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph: *Provided*, That the augmentation authorized by such paragraph shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State laws.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3679

**(b) [Lake Tahoe.]**—(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) the provisions of paragraph 204(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year. (104 Stat. 3297)

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water

3680 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies. (104 Stat. 3297)

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points: *Provided*, That the distribution system is not

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3681

operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraphs (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted. (104 Stat. 3297)

**(c) [Truckee River—Sierra Pacific Power Company.]—(1)** There is allocated to the State of California the right to divert or extract, or to utilize any

November 16, 1990

3682 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3683

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1) (B) and (D) and shall not be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1,000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet. (104 Stat. 3300)

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities,

November 16, 1990

3684 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and (iii) the provision of subparagraph 204(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversion or extraction of water by residences, shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 204(c) (1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation. (104 Stat. 3300)

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3685

**(d) [~~Compliance—Reports—Courts—Claims.~~]**—(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. With the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

**(e) [~~Forfeiture or abandonment.~~]**—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

**(f) [~~Interstate transfers.~~]**—(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree,

November 16, 1990

3686 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

**(g) [Use of water by the United States.]**—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

**(h) [Court decrees.]**—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

**(i) [Place of use to determine allocation.]**—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

**(j) [Applicability of State law.]**—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder. (104 Stat. 3303)

**Sec. 205. [Truckee River water supply management.]—(a) [Operating agreement.]**—(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3687

executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir. (104 Stat. 3304)

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code,

November 16, 1990

3688 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. § 706(2)(A)-(D): *Provided*, That the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended. (104 Stat. 3304)

EXPLANATORY NOTE

<b>References in the Text.</b> Section 706 of the Act of September 6, 1966 (Public Law 89-554, 80 Stat. 393; 5 U.S.C. § 706(2)(A)-(D) referenced above appears in Supplement I at page S479.	The Endangered Species Act of 1975, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884) referenced above appears in Volume IV at page 2782.
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(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3689

to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery. (104 Stat. 3304)

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

EXPLANATORY NOTE

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

**(b) [Authorization for use of Washoe Project facilities, Truckee River storage facilities, and Lake Tahoe Dam and Reservoir.]**—(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of non-project water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements. (104 Stat. 3307)

**(c) [Release of Washoe Project repayment obligation.]**—The Secretary is released from any obligation to secure payment for the costs of constructing

November 16, 1990

3690 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked. (104 Stat. 3308; 43 U.S.C. § 614-614d.)

EXPLANATORY NOTE

**Reference in the Text.** The Act of referenced above appears in Volume II at page August 1, 1956 (ch. 809, 70 Stat. 775) 1318 and in Supplement I at page S266.

**Sec. 206. [Wetlands protection.]—(a) [Authorization to purchase water rights.]—**(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water right acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

EXPLANATORY NOTE

**Reference in the Text.** The National above does not appear herein. Wildlife Refuge Administration Act referenced

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3691

purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine' and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act. (104 Stat. 3308)

**(b) [Expansion of Stillwater National Wildlife Refuge.]—**

(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted

November 16, 1990

3692 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System. (16 U.S.C. § 668dd note.)

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3693

longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition. (104 Stat. 3309)

**(c) [Water Use, Naval Air Station, Fallon, Nevada.]**—(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce [sic] direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 206 and 207 of this title: *Provided, That,*

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with

November 16, 1990

3694 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe. (104 Stat. 3310)

**(d) [State cost-sharing.]**—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than \$9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

**(e) [Transfer of Carson Lake and Pasture.]**—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

**(f) [Lahontan Valley and Pyramid Lake Fish and Wildlife Fund.]**—

(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsections 205 (a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3695

**(g) [Indian Lakes area.]**—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service. (104 Stat. 3312)

**Sec. 207. [Cui-ui and Lahontan Cutthroat Trout Recovery and Enhancement Program.]—(a) [Recovery plans.]**—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

**(b) [Truckee River rehabilitation.]**—(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

- (A) restoring riparian habitat and vegetative cover;
- (B) stabilizing the course of the Truckee River to minimize erosion;
- (C) improving spawning and migratory habitat for the cui-ui;
- (D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

November 16, 1990

3696 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

**(c) [Acquisition of water rights.]**—(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3697

**(d) [Use of Stampede and Prosser Reservoirs.]**—(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

**(e) [Offsetting flows.]**—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement. (104 Stat. 3312)

**Sec. 208. [Pyramid Lake Fisheries and Development Funds.]—(a) Funds established.**—(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund \$25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in

November 16, 1990

3698 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

accordance with plans prepared by the Pyramid Lake Tribe in consultation with and the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at \$25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund \$40,000,000 in five equal annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3699

Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Public Law 100-497(102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

EXPLANATORY NOTE

**Reference in the Text.** The Indian Gaming 2467) referenced above does not appear herein. Regulatory Act, Public Law 100-497 (102 Stat.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for fiscal year 1992.

November 16, 1990

3700 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal years 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997. (104 Stat. 3315)

**Sec. 209. [Newlands Project improvement.]—(a) [Expansion of authorized purposes.]—**(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

- (A) fish and wildlife, including endangered and threatened species;
- (B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;
- (C) recreation;
- (D) water quality; and
- (E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

**(b) [Truckee River diversions.]—**The Secretary shall not implement any provision of this title in a manner that would: (1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

**(c) [Project efficiency study.]—**(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

**(d) [Water bank.]—**The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3701

agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

**(e) [Recreation study.]**—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

**(f) [Effluent reuse study.]**—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

**(g) [Repayment cancellation.]**—Notwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 209(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

**(h) [Settlement of claims.]**—(1) The provisions of subsections 209 (d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than \$4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in

November 16, 1990

3702 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

**(i) [Fish and wildlife.]**—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

**(j) [Operating criteria and procedures.]**—(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F. Supp. 252 (D. D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands, Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3703

will result in the expenditure of any funds out of the United States Treasury. (104 Stat. 3317)

**Sec. 210. [Miscellaneous provisions.]—(a) [Claims settlement—Effective dates.]—**(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) *Pyramid Lake Paiute Tribe v. California*, Civ. S181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) *United States v. Truckee-Carson Irrigation District*, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) *Pyramid Lake Paiute Tribe v. Lujan*, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) *Pyramid Lake Paiute Tribe v. Department of the Navy*, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsections 206(c), 207 (c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragraph 208(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered

November 16, 1990

3704 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

**(b) [General provisions.]**—(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3705

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such nonmembers, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating and all forms of water based recreation on fee patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection. (104 Stat. 3320)

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

November 16, 1990

3706 TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935, and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute

November 16, 1990

TRUCKEE-CARSON-PYRAMID LAKE SETTLEMENT 3707

construction within the meaning of section 23(b) of the Federal Power Act, as amended: *Provided*, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works: *And provided further*, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 205(a)(6).

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the above appear in Supplement II at page 5813. Federal Power Act, as amended, referenced

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation. (104 Stat. 3321)

**(c) [Appropriations authorized.]**—There are authorized to be appropriated such sums as may be required to implement the provisions of this title. (104 Stat. 3324)

EXPLANATORY NOTES

**Codification.** Except for subsections 205(c) 101-618 in the 101<sup>st</sup> Congress. Reported to the (43 U.S.C. § 614-614d) and 206(b) (43 U.S.C. § Senate from Indian Affairs; S. Repts. No. 668dd), this Act is not codified. 101-555. Passed Senate October 26, 1990.

**Legislative History.** S. 3084, Public Law Passed House October 27, 1990.

**FORT MCDOWELL INDIAN COMMUNITY WATER RIGHTS  
SETTLEMENT ACT OF 1990**

[Extracts from] an Act to provide for the designation of certain public lands as wilderness in the State of Arizona. (Act of November 28, 1990, Public Law 101-628, 104 Stat. 4469)

\* \* \* \* \*

**TITLE IV—FORT MCDOWELL INDIAN COMMUNITY WATER  
RIGHTS SETTLEMENT**

**Section 401. [Short title.]**—This title may be cited as the "Fort McDowell Indian Community Water Rights Settlement Act of 1990".

**Sec. 402. [Congressional findings and declarations.]**—(a) The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on September 15, 1903, the United States Government established a reservation for the Fort McDowell Indian Community in Arizona north of the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to water and the financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self-sufficiency;

(6) proceedings to determine the full extent and nature of the Community's water rights and damages thereto are currently pending before the United States District Court in Arizona, the United States Claims Court, the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source, and before various Federal agencies under the Federal Tort Claims Act;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3709

to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle disputes over water and reduce the burdens of litigation;

(8) after more than five years of negotiation, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who are all party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, and to provide for the orderly development of the Community's lands;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately twelve thousand acre-feet of surface water to the Community; provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, the Congress declares that the purposes of this Act are: (1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities, (2) to authorize and direct the Secretary of the Interior to execute and perform such agreement, and (3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act. (104 Stat. 4480)

**Sec. 403. [Definitions.]**—For purposes of this Act—(a) "Agreement" means that agreement among the Fort McDowell Indian Community, the State of Arizona, the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona Town of Gilbert, and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to sections 411(d) and 412(a)(8) of this Act.

(b) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1521 et seq.).

(c) "CAWCD" means the Central Arizona Water Conservation District organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

November 28, 1990

3710 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

(d) "Community" means the Fort McDowell Indian Community, a community of Yavapai Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476), and duly recognized by the Secretary.

(e) "HVID" means the Harquahala Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(f) "Kent Decree" means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(g) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(h) "Secretary" means the Secretary of the United States Department of the Interior.

(i) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation. (104 Stat. 4481)

EXPLANATORY NOTE

**References in the Text.** Title III of the Colorado River Basin Project Act of 1968, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 888; 43 U.S.C. § 1521 et seq.) referenced in subsection 403(b) appears in Volume IV at page 2398. Amendments and annotations of the 1968 Act appear in Supplement II at page S995. The Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476) referenced in subsection 403(d) does not appear herein.

**Sec. 404. [Kent Decree reregulation.]**—(a) To permit the Community to more fully utilize its water rights under the Kent Decree as provided in the Agreement and subsection (b) of this section, the agreement between the United States and the SRP dated June 3, 1935, as amended on November 26, 1935, relating to the Verde River Storage Works, and the agreement among the SRP, Phelps Dodge Corporation, and the Defense Plant Corporation dated March 1, 1944, including, but not limited to, the provisions of such agreements by which SRP saves and holds harmless the United States, and the rights of the United States and SRP to Verde River storage, are hereby ratified, confirmed and declared to be valid: *Provided, however,* That the priority date and quantification of these storage rights, and such other storage rights as may exist, shall be determined in an appropriate state proceeding in the State of Arizona. Nothing in this Act or the Agreement shall affect the validity or invalidity of any permit, right-of-way, license or grant held by Phelps Dodge Corporation for the utilization of land or water within the San Carlos Apache Reservation.

(b) The Secretary is authorized and directed to contract with SRP, for a period of not more than twenty-five years from the date the authorizations contained in section 409(b) of this Act become effective, for the utilization of up to three

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3711

thousand acre-feet of the existing storage right of the United States and SRP behind Bartlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights to water under the Kent Decree. This storage space shall be for seasonal regulation only, with no annual carryover past October 1. (104 Stat. 4482)

**Sec. 405. [Ratification and confirmation of contracts.]**—(a) The contract between the SRP and RWCD dated October 24, 1924, together with all amendments thereto and any extension thereof entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

(b) The Secretary is authorized and directed to revise the subcontract of the RWCD agricultural water service from the CAP to include an addendum substantially in the form of exhibit "10.3.2" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(c) The lands within the RWCD and the lands within the SRP shall be free from the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(d) Neither SRP nor the RWCD shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. § 390aa et seq.) by virtue of either of their participation in the settlement or their execution and performance of the Agreement, including, but not limited to, any exchanges provided for in the Agreement. (104 Stat. 4482)

EXPLANATORY NOTE

**References in the Text.** The Reclamation Reform Act of 1982, the Act of October 12, 1982 (Public Law 97-293, 96 Stat. 1263; 43 U.S.C. § 390aa et seq.) referenced in subsection 405(d) appears in Volume IV at page 3334 and, as subsequently amended, in Supplement II at page S1092.

**Sec. 406. [Other water.]**—(a) The Secretary is authorized and directed to acquire for the Community thirteen thousand nine hundred thirty-three acre-feet of water from one or a combination of the following sources:

(1) CAP water permanently relinquished by the HVID pursuant to contract with the Secretary.

(2) CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company pursuant to contract with the Secretary. Any water acquired by the Secretary pursuant to this section shall be acquired with the consent of the contracting entity and shall be assigned to the Community in partial satisfaction of the Secretary's obligation under this section.

November 28, 1990

3712 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

(3) In the event that the Secretary cannot acquire thirteen thousand nine hundred and thirty-three acre-feet of water, solely or in combination, from the sources identified in subsections (a)(1) and (a)(2) of this section, then the Secretary is authorized to acquire, from all water resources within the State of Arizona at the disposal of the United States, water in amounts necessary to meet the requirements of this section.

**HARQUAHALA VALLEY IRRIGATION DISTRICT**

(b) The Secretary is authorized to contract with the HVID for the permanent relinquishment of any portion of HVID's rights to CAP agricultural water.

(1) The Secretary may use HVID water with its original CAP agricultural priority or may convert it, at the rate of one acre-foot per CAP-eligible acre, to a maximum of thirty-three thousand two hundred and sixty-three acre-feet of CAP Indian priority water. Up to thirteen thousand nine hundred and thirty-three acre-feet of such water shall be made available to the Community by contract with the Secretary.

(2) As consideration for the fair value of water relinquished under subsection (b) of this section, the Secretary is authorized:

(i) to credit the HVID with an appropriate share of its outstanding CAP distribution system debt, with such share reflecting the relationship between the amount of HVID CAP rights acquired by the Secretary and the total CAP allocation of the HVID; and

(ii) to offset the annual repayment requirements of the CAWCD under repayment contract numbered 14-06-W-245 in amounts which total the balance of the fair value of the water acquired and not accounted for under (i) above until such value is exhausted.

(3) In the event that the Secretary acquires all or a part of the CAP water rights of the HVID, the following shall apply:

(i) The Secretary is authorized to transfer title to existing Federal facilities within HVID that are no longer needed for CAP purposes to the CAWCD or to other non-Federal entities.

(ii) The Secretary is authorized to approve or execute any agreements that are necessary to accomplish the transfer of HVID's CAP agricultural water rights to the Secretary for Indian water rights settlement purposes. As a condition of the transfer of such entitlement, the lands which are purchased by non-Federal interests within HVID must be excluded from HVID. Except as provided for in Article 8.7 of the December 1, 1988, contract between the United States and CAWCD, the excluded lands shall not be entitled to a supply of CAP water for agricultural purposes and shall not be subject to the ownership limitations of Federal reclamation law and all full cost pricing provisions of Federal law.

(iii) The agreement implementing the transfer of HVID's CAP agricultural water rights to the Secretary shall provide that any lands which remain in HVID or its successor shall continue to be subject to the ownership

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3713

limitations of Federal reclamation law and all full cost pricing provisions of Federal law as long as HVID, or its successor, has a Federal repayment obligation for the cost of the CAP distribution system. The agreement implementing the transfer shall provide that lands remaining in HVID, or its successor, will not bear costs of operation, maintenance, and replacement for the CAP distribution system greater than that which they would have in the absence of the transfer of HVID's CAP agricultural water rights.

(4) Water acquired by the Secretary for the Fort McDowell Indian Community pursuant to this subsection shall be delivered to the Community as provided for in the Agreement. Any remaining water acquired by the Secretary pursuant to this subsection (b) shall be used only in the settlement of water rights claims of other Indian tribes having claims to the water in the Salt and Verde River system.

**VERDE RIVER WATERSHED**

(c) Providing that the Secretary first acquires at least seven thousand acre-feet of CAP water from one or more of the entities named in subsection (a)(2), of this section, the Secretary is authorized to acquire, by purchase from willing sellers, land and water rights in the Big Chino Valley of the Verde River watershed, in an amount sufficient to replace all such water so acquired.

(1) The Secretary shall not acquire any land or water rights in the Big Chino Valley of the Verde River watershed until he has completed a study to determine whether, through the construction of water diversion, collection, and conveyance facilities to deliver water to a point near Sullivan Lake in Yavapai County, Arizona (hereinafter referred to as the "Sullivan Lake delivery point"), the exercise of such water rights will not have an adverse affect [sic] on the flow or the biota of the Verde River and that such exercise is not likely to jeopardize the continued existence of *Meda fulgida* (spikedace) or any other threatened or endangered species. The Secretary shall make the study required by this paragraph available to the public for inspection and comment upon its completion.

(2) The Secretary is authorized to enter into an agreement with the City of Prescott to reimburse the city for not to exceed \$800,000 advanced to the Secretary by the city for the purpose of expediting completion of the study required in subsection (c)(1) of this section.

(3) If the Secretary determines, based upon the findings of the study, that the exercise of water rights will not have an adverse effect on the flow or the biota of the Verde River and is not likely to jeopardize the continued existence of *Meda fulgida* (spikedace) or any other threatened or endangered species, the Secretary shall be authorized to acquire land in the Big Chino Valley and to construct diversion, collection, and conveyance facilities sufficient to deliver the water to the Sullivan Lake delivery point.

(4) The Secretary shall develop and implement a continuous monitoring program to ensure that groundwater pumping from land acquired pursuant to

November 28, 1990

3714 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

this subsection (c) shall not adversely affect the flow or the biota of the Verde River and to ensure that it will not jeopardize the continued existence of *Meda fulgida* (spikedace) or any other threatened or endangered species. The program shall be developed prior to and implemented concurrent with the construction of the facilities described in subsection (c)(3) of this section.

(d) If the Secretary acquires the CAP contract or subcontracts of the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to a point downstream on the Verde River. Subject to the study required in subsection (d)(1) of this section and all applicable law, the Secretary is further authorized to place into the Verde River at the point downstream an amount of water sufficient, including all losses, to replace the water assigned by such entity or entities pursuant to this subsection.

(1) The Secretary shall not construct any water conveyance facilities from the Sullivan Lake delivery point to any point downstream on the Verde River to replace water assigned pursuant to subsection (a)(2) of this section, until he has completed a study to determine whether the flow of the Verde River may be augmented without jeopardizing the continued existence of *Meda fulgida* (spikedace) or any other threatened or endangered species and, if the flow of the Verde may be so augmented, at what point or points downstream from the Sullivan Lake delivery point such augmentation would be most appropriate.

(2) The Secretary shall, in conjunction with arrangements for the delivery of water pursuant to this subsection (d), develop and implement a monitoring program to ensure that the augmentation of the Verde River will not jeopardize the continued existence of *Meda fulgida* (spikedace) or any other threatened or endangered species.

(e) If the Secretary acquires the CAP contract or subcontract of the Yavapai-Prescott Tribe or the City of Prescott, the Secretary is authorized to construct water conveyance facilities from the Sullivan Lake delivery point to the City of Prescott's existing pumping facilities in the Little Chino Valley, Yavapai County, Arizona. If the Secretary constructs such water conveyance facilities, the City of Prescott shall repay the Secretary for the costs thereof. Nothing in this subsection shall be construed to prevent the City of Prescott from constructing such conveyance facilities itself.

(1) The Secretary shall deliver water to the City of Prescott's existing pumping facilities or to such other point as the Secretary and the City of Prescott may agree, in an amount sufficient, including all losses, to replace the water acquired from the City of Prescott and the Yavapai-Prescott Tribe.

(2) The Secretary is authorized and directed to enter into such agreements as are necessary to ensure that the Yavapai-Prescott Tribe will receive its share of the water to be developed by the Secretary pursuant to this subsection (e). Such agreement shall set forth the cost and other terms of delivery of such water.

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3715

(3) The Secretary is authorized and directed, at the request of the Yavapai-Prescott Indian Tribe, to enter into and renew agreements granting the Yavapai-Prescott Indian Tribe long-term grazing privileges on the land acquired by the Secretary pursuant to subsection (a)(2) of this section: *Provided*, That the exercise of such privileges by the Yavapai-Prescott Indian Tribe shall not interfere with the exercise of water rights upon such land except for water reasonably needed by the Yavapai-Prescott Indian Tribe in connection with grazing.

(f) The Secretary is authorized to contract to deliver replacement water to the entities identified in subsections (d) and (e) of this section which relinquish CAP water to the Secretary for the benefit of the Community. The replacement water shall be delivered by the Secretary at the Sullivan Lake delivery point unless otherwise agreed by the Secretary and the entity to receive the water. No replacement water may be delivered to any entity other than those identified in subsection (a)(2) of their [sic] section or their agents, and no replacement water may be used directly or indirectly outside Yavapai County, Arizona.

(g) The entities which relinquish CAP water to the Community pursuant to subsection (a)(2) of this section shall not be required to repay costs incurred by the United States pursuant to subsections (c) and (c)(3) of this section. The entities identified in subsection (d) of this section, except for any entity which is an Indian tribe, shall repay the United States so much of the cost of the undertaking identified in subsection (d) as the entities and the United States shall agree. The costs of any undertaking pursuant to this subsection (g) allocated to an Indian tribe shall be nonreimbursable.

(h) The Secretary is authorized and directed to study the sources and cost of the water supplies, other than those identified in this section, that can be used to satisfy the water rights of the Yavapai-Prescott Indian Tribe and of the Yavapai-Apache Indian Community of the Camp Verde Reservation. A separate study shall be made for each tribe. Each study shall be commenced within one hundred and eighty days after the enactment of this Act and shall be completed within one year after it is commenced. Copies of such studies shall be provided to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate.

(i) If the Secretary acquires water for the Community pursuant to subsection (a)(2) of this section, then the Secretary shall exclude, for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be non-reimbursable.

(j) The Secretary shall, in the exercise of the authorities provided in subsection (a) of this section, comply with all applicable environmental law.

(k) *Repealed.* (104 Stat. 4483)

November 28, 1990

3716 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

EXPLANATORY NOTE

**Provision Repealed.** Section 109(c) of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4530) repealed subsection 406(k). The repealed text read as follows: "If the Secretary acquires at least seven thousand acre-feet of CAP water from the entities identified in subsection (a)(2) of this section, there is authorized to be appropriated not to exceed \$30,000,000 to pay the costs of acquiring the land and water resources identified in subsection (c) of this section and the costs allocable to the construction of diversion, collection, and conveyance facilities described in subsection (c); costs allocable to the

construction or diversion, collection, and conveyance facilities shall be adjusted by 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.

(1) There is authorized to be appropriated such sums as may be necessary to provide for the studies required in subsections (c)(1), (d)(1), and (h) of this section and for the monitoring programs described in subsections (c)(4) and (d)(2) of this section." Section 109(c) of the 1994 Act appears in Volume V at page 4016.

**Sec. 407. [Water delivery contract amendments—Water lease.]**—(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof,

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the City of Phoenix under the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement for a term commencing January 1, 2001, and ending December 31, 2099.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "20.2.1" to the Agreement and the terms and conditions of the Project Water Lease set forth in exhibit "20.2.2" to the Agreement are hereby authorized, approved, and confirmed.

(c) The United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section "6(b)" of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the City of Phoenix as lessee of the Project Water Lease herein authorized.

(d) The Community and the Secretary shall lease to the City of Phoenix, for a term commencing on January 1, 2001, and ending December 2099, for consideration in an amount agreed to by the Community and the City to be paid by the City to the Community, upon those reflected in the Project Water Lease set forth in exhibit "20.2.2" to the Agreement, the four thousand three hundred

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3717

acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Lease shall specifically provide that—

(1) the City of Phoenix, in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the CAWCD: *Provided*, That such payments shall not be commenced earlier than October 1, 1999;

(2) except as otherwise provided in the Project Water Lease, the City of Phoenix shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 shall be United States of America and the CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Lease referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Notwithstanding any other provision statutory of or common law, the Community may, with the approval of the Secretary, lease water provided to the Community under section 406 of this Act for its fair market value for a term not to exceed 100 years as provided in the Agreement but in no event for use outside Pima, Pinal or Maricopa Counties, State of Arizona. If some or all of the water provided to the Community under section 406 of this Act is CAP water, the provisions of subsections of (a), (b), (c), (d), and (e) of this section 407 shall apply to any lease of such water.

(g) Except as authorized by this section, no water made available to the Community or its members pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

(h) If water is acquired from the Salt and Verde watershed pursuant to section (406)(a)(3), no such water may be sold, leased, transferred, or in any way be used off of the Community's reservation. (104 Stat. 4487)

**Sec. 408. [Fort McDowell Indian Community Development Fund—Loan.]**—(a) As soon as practicable, the Community shall establish the Fort McDowell Indian Community Development Fund into which shall be deposited—

(1) by the Secretary, the funds appropriated pursuant to subsection (b) of this section; and

(2) by the State of Arizona, \$2,000,000 required by paragraph 21.4 of the Agreement.

(b) There is hereby authorized to be appropriated, together with interest accruing from one year after the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into account the average

November 28, 1990

3718 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

market yield on outstanding Federal obligations of comparable maturity, \$23,000,000 which the Secretary shall deposit into the Community Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation.

(c) As of the date the authorizations contained in section 409(b) of this Act become effective, the Community, in its discretion, may use the Development Fund, principal and income, to fulfill the purposes of the Agreement and this title: *Provided*, That no amount of the Federal or State appropriations deposited into the Development Fund may be used to make per capita payments to members of the Community.

(d) As of the date the authorizations contained in section 409(b) of this Act become effective—

(1) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from, the Development Fund, and

(2) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Development Fund.

(e) The Secretary is authorized and directed to provide to the Community a loan pursuant to the Small Reclamation Projects Act (Ch. 972, 70 Stat. 1044; 43 U.S.C. § 422a, as amended), in the amount of \$13,000,000, to be repaid over a term of fifty years without interest, for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation: *Provided*, That any requirements for qualifying for the loan are hereby waived, including, but not limited to, the provisions of section 3, 4(b)(2), 5(a) and 5(c) of the Small Reclamation Projects Act.

(1) The Community shall establish an account into which the Community shall deposit \$1,000,000. The principal and all accrued income shall be retained in such fund until such time as the Community's obligation to repay the loan under subsection (e) is fulfilled.

(2) No appropriations for the construction of the CAP made after the date of enactment of this Act shall be used to plan, design, construct, or operate any facilities on the Fort McDowell Indian Reservation. (104 Stat. 4488)

EXPLANATORY NOTE

**Reference in the Text.** The Small Reclamation Projects Act, Act of August 6, 1956 (Public Law 89-984, Ch. 972, 70 Stat. 1044; 43 U.S.C. § 422a, as amended) referenced in subsection 408(e) appears in Volume I at page 1331. Amendments appear at pages 1348, 1824, 2641, 2932, 3203, and 3345 in Volumes I through IV; pages S268 through S278 in Supplement I; and at page S875 in Supplement II.

**Sec. 409. [Satisfaction of claims.]—**(a) The benefits realized by the Community's members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3719

under Federal and State laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this Act, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this Act.

(b) The Community and the Secretary on behalf of the United States are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in ground water, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in ground water, surface water, and effluent), from and after the effective date of this Act, which the Community and its members may have, against the United States, the State of Arizona or 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.

(c) Except as provided in paragraphs 19.2 and 19.5 of the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona in its own right or on behalf of the Community based upon—

- (1) water rights or injuries to water rights of the Community and its members; or
- (2) water rights or injuries to water rights held by the United States on behalf of the Community and its members.

(d) In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 412(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands. (104 Stat. 4489)

**Sec. 410. [Environmental compliance.]**—(a) Execution of the settlement Agreement by the Secretary as provided for in section 411(d) shall not constitute major Federal action under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance, except as specifically directed otherwise herein, during the implementation phase of this settlement.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out all necessary environmental compliance associated with this settlement, including mitigation measures adopted by the Secretary.

(c) With respect to this settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(d) Except as specifically set forth herein, the Secretary shall comply with all aspects of NEPA and the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), and other applicable environmental acts and regulations in proceeding

November 28, 1990

3720 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

through the implementation phase of this settlement: *Provided, however,* That in regard to NEPA compliance, the Secretary is precluded from studying or considering alternatives to the Community's on-reservation agriculture development plans which will be facilitated by the settlement, or performed under the Small Reclamation Projects loan made pursuant to section 408(e). (104 Stat. 4490)

EXPLANATORY NOTE

**References in the Text.** The National Environmental Policy Act, Act of January 1, 1970 (Public Law 91-190, 83 Stat. 852; 42 U.S.C. § 4321 et seq.) referenced in subsection 410(a) appears in Volume IV at page 2492. The Endangered Species Act of 1973, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884; 16 U.S.C. § 1531 et seq.) referenced in subsection 410(d) appears in Volume IV at page 2782.

**Sec. 411. [Miscellaneous provisions.]**—(a) In the event any party to the Agreement should file a lawsuit in Federal District Court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Community as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the Fort McDowell Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) Water received by entities other than the Community pursuant to the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(d) To the extent the Agreement does not conflict with the provisions of this title, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(e) As of the date the authorizations contained in section 409(b) of this Act become effective, section 302(a) of the Colorado River Basin Project Act (43 U.S.C. § 1522(a)) shall no longer apply to the Community.

(f) An easement for the construction, operation and maintenance of the Community's water diversion system on and within the lands identified in the Community's special permit extension application dated July 12, 1990, filed with the United States Forest Service, Department of Agriculture, is hereby granted in perpetuity.

(g) As of the date the authorizations contained in section 409(b) of this Act and in section 10(b) of the Salt River Pima-Maricopa Indian Community Water

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3721

Rights Settlement Act (102 Stat. 2549) become effective, subsection 404(a) of this Act shall become effective as to the Salt River Pima-Maricopa Indian Community and the United States.

(h) Section 7(a) of the Salt River Pima-Maricopa Indian Community Water Rights Act (102 Stat. 2549) is hereby amended by striking the date "1990" and inserting in lieu thereof "1991." (104 Stat. 4490)

EXPLANATORY NOTE

**References in the Text.** Section 302(a) of the Colorado River Basin Project Act of 1968, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 888; 43 U.S.C. § 1522(a)) referenced in subsection 411(e) appears in Volume IV at page 2401. Annotations and amendments of the 1968 Act appear in Supplement II at page S995. The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act, Act of October 20, 1988 (Public Law 100-512, 102 Stat. 2549) referenced in subsections 411(g) and (h) and 412(b) appears in Volume V at page 3579.

**Sec. 412. [Effective date.]**—(a) The authorizations contained in section 409(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that:

- (1) the Secretary has signed a contract with the SRP for the storage and reregulation of the Community's Kent Decree water pursuant to section 404;
- (2) the RWCD subcontract for agricultural water service from CAP has been revised and executed as provided in section 405(b);
- (3) the Secretary has acquired water pursuant to section 406 and made it available for delivery for the benefit of the Community;
- (4) the funds authorized by section 408(b) have been appropriated and deposited into the Community Development Fund;
- (5) the loan authorized by section 408(e) has been provided to the Community;
- (6) the State of Arizona has appropriated and deposited into the Community Development Fund the \$2,000,000 required by paragraph 21.4 of the Agreement;
- (7) the stipulation which is attached to the Agreement as exhibit "19.5" has been approved; and
- (8) the Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) of this section have not occurred by December 31, 1993, sections 4, 5(a), and 5(b), if they have not theretofore become effective pursuant to the provisions of the Act of October 20, 1988 (Public Law 100-512), and sections 407, 408(a), 408(b), 408(e), 409(b), 409(c), 411(a), 411(b), 411(c), 411(d), 411(e) and 411(f) of this Act and any contracts entered into pursuant to those provisions shall not thereafter be effective, and any funds appropriated pursuant to section 408(b) of this Act shall revert to the Treasury, and any funds

November 28, 1990

3722 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

appropriated pursuant to paragraph 21.4 of the Agreement shall revert to the State of Arizona. (104 Stat. 4491)

EXPLANATORY NOTE

**References in the Text.** The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Act of October 20, 1988 (Public Law 100-512, 102 Stat. 2549) referenced above appears in Volume V at page 3579.

**Sec. 413. [Other claims.]**—Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community. (104 Stat. 4492)

TITLE V—NATIONAL PARK SYSTEM UNITS IN TEXAS

**Sec. 501. [Expansion of San Antonio Missions National Historical Park.]—(a) [Expansion.]**—Section 201(a) of the Act entitled "An Act to amend the Pennsylvania Avenue Development Corporation Act of 1972; to provide for the establishment of the San Antonio Missions National Historical Park; and other purposes" (16 U.S.C. § 410ee(a)) is amended by inserting after the first sentence the following: "The park shall also consist of the lands and interests therein within the area bounded by the line depicted as 'Proposed Boundary Extension' on the maps entitled 'San Antonio Missions National Historical Park', numbered 472-80,075, 472-80,076, 472-80,077, 472-80,078, 472-80,079, 472-80,080, and 472-80,081 and dated June 7, 1990, which shall be on file and available for public inspection in the same manner as is such drawing."

EXPLANATORY NOTE

**References in the Text.** An Act to amend the Pennsylvania Avenue Development Corporation Act of 1972 (16 U.S.C. § 410ee(a)) referenced in subsection 501(a) does not appear herein.

**(b) [Development of essential public facilities.]**—Section 201(f)(2) of such Act is amended by striking "not more than \$500,000." and inserting "not more than \$15,000,000."

**Sec. 502. [Lake Meredith National Recreation Area.]—(a) [Establishment.]**—In order to provide for public outdoor recreation use and enjoyment of the lands and waters associated with Lake Meredith in the State of Texas, and to protect the scenic, scientific, cultural, and other values contributing to the public enjoyment of such lands and waters, there is hereby established the Lake Meredith National Recreation Area (hereafter in this Act referred to as the "recreation area"). (16 U.S.C. § 460eee.)

November 28, 1990

FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS 3723

**(b) [Area included.]**—The recreation area shall consist of the lands, waters, and interests therein within the area generally depicted on the map entitled "Lake Meredith National Recreation Area Boundary Map, 'Fee-Take Line'", numbered SWRO-80,023-A, and dated September 1990. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the recreation area.

**(c) [Transfer.]**—(1) Except as provided in paragraph (2), the Federal lands, waters, and interests therein within the recreation area are hereby transferred to the National Park Service.

(2) Those lands depicted on the map referred to in subsection (b) that are necessary for the continued operation, maintenance, and replacement of the Canadian River Project facilities and its purposes of providing for municipal and industrial water supply and flood control shall remain under the jurisdiction of the Bureau of Reclamation.

**Sec. 503. [Administration.]—(a) [In general.]**—The Secretary shall administer the recreation area in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. § 1, 2-4), and the Act of August 7, 1946 (60 Stat. 885). In the administration of such recreation area, the Secretary may utilize such statutory authority as may be available to him for the protection of natural and cultural resources as he deems necessary to carry out the purposes of this Act. (16 U.S.C. § 460eee-1.)

**(b) [Operation of Canadian River Project.]**—Nothing in this Act shall be construed to affect or interfere with the authority of the Secretary under the Act of December 29, 1950 (Public Law 81-898; 43 U.S.C. § 600b et seq.), to operate Sanford Dam and Lake Meredith in accordance with and for the purposes set forth in that Act.

EXPLANATORY NOTE

**References in the Text.** The Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. § 1, 2-4), referenced in subsection 503(a) does not appear herein.

Extracts from the Act of August 7, 1946 (60 Stat. 885) also referenced in subsection 503(a)

appears in Volume II at page 838.

The Canadian River Project Act, Act of December 29, 1950 (Public Law 81-898, 64 Stat. 1124; 43 U.S.C. § 600b et seq.) referenced in subsection 503(b) appears in Volume II at page 1048.

\* \* \* \* \*

November 28, 1990

3724 FT. MCDOWELL INDIAN COMMUNITY WATER RIGHTS

EXPLANATORY NOTES

**Not Codified.** Title IV of this Act is not codified in the U.S. Code.

**Legislative History.** H.R. 2570 (See S. 3068) Public Law 101-628 in the 101<sup>st</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Repts. No. 101-405. Passed House February 23, 1990.

Reported in the Senate from Energy and Natural Resources; S. Repts. No. 101-359. Passed the Senate October 27, 1990, amended. House concurred in Senate amendment with an amendment. Senate concurred in House amendment.

August 17, 1991

3725

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1992**

[Extracts from] an Act making appropriations for energy and water development for the fiscal year ending September 30, 1992, and for other purposes. (Act of August 17, 1991, Public Law 102-104; 105 Stat. 510)

TITLE I

DEPARTMENT OF DEFENSE-CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS-CIVIL

\* \* \* \* \*

OPERATION AND MAINTENANCE,  
GENERAL

\* \* \* \* \*

**[Reoperation of Folsom Dam-cost sharing agreement required.]** That the Secretary of the Army, acting through the Chief of Engineers, is directed to allocate resources and take other steps necessary to complete an environmental impact statement and related documents by June of 1992 on a plan to reoperate Folsom Dam to provide greater flood control, using funds appropriated for that purpose in fiscal year 1991. This plan shall require a cost sharing agreement between local sponsors and the Secretary of the Interior based on the requirements of section 103 of the Water Resources Development Act of 1986, with the costs for foregone water and power sales to be computed on the basis of actual reductions in supply attributable to greater operations for flood control in that year. (105 Stat. 517 - 518)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Stat. 4082), including section 103 appear in Water Resources Development Act of 1986, Act Volume V at page 3532. of November 17, 1986 (Public Law 99-662, 100

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TITLE II

August 17, 1991

3726 ENERGY AND WATER APPROPRIATIONS ACT, 1992

DEPARTMENT OF THE INTERIOR

\* \* \* \* \*

GENERAL PROVISIONS  
DEPARTMENT OF THE INTERIOR

\* \* \* \* \*

**Sec. 205. [Non-Federal cost sharing entities may be exempt from Federal Advisory Committee Act]**—The Bureau of Reclamation may invite non-Federal entities involved in cost sharing arrangements for the development of water projects to participate in contract negotiation and source selection proceedings without invoking provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix (1988)): *Provided*, That such non-Federal participants shall be subject to the provisions of the Federal Procurement Integrity Act. (41 U.S.C. 423 (1988)) and to the conflict of interest provisions appearing at 18 U.S.C. 201 et seq. (1988). (105 Stat. 526)

EXPLANATORY NOTE

**References in the Text.** The Federal Advisory Committee Act referenced above appears in Supplement I at page S482. The Federal Procurement Integrity Act referenced above does not appear herein.

\* \* \* \* \*

**[Short title.]**—This Act may be cited as the "Energy and Water Development Appropriations Act, 1992".

EXPLANATORY NOTES

**Not Codified.** The extracts of this Act reprinted here are not codified in the U.S. Code. (Conference). Passed House May 29, 1991. S. Rept. No. 102-80 (Appropriations). Considered and passed Senate, amended, July 9, 10, 1991.

**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. House agreed to conference report; receded and concurred in certain Senate amendments, in others with amendments July 31, August 1, 1991. Senate agreed to conference report;

**Legislative History.** H.R. 2427, Public Law 102-104 in the 102<sup>nd</sup> Congress. H.R. Rept. Nos. 102-75 (Appropriations) and 102-177 concurred in House amendments August 2, 1991.

December 12, 1991

3727

## **SAN CARLOS INDIAN IRRIGATION PROJECT DIVESTITURE ACT OF 1991**

An Act to provide for the divestiture of certain properties of the San Carlos Indian Irrigation Project in the State of Arizona, and for other purposes. (Act of December 12, 1991, Public Law 102-231, 105 Stat. 1722, as amended by the Act of October 24, 1992, Public Law 102-497, 106 Stat. 3255)

### EXPLANATORY NOTE

**Editor's Note.** The San Carlos Irrigation District Project Divestiture Act of 1991 was special legislation drafted by Bureau of Reclamation staff at the request of certain congressional committees concerned with the use of certain United States assets administered by the Bureau of Indian Affairs. As the conditions and requirements of the Act were never fully realized by July 31, 1993, as specified in subsection 10(b), the provisions of the Act were never implemented. Accordingly,

the United States retained ownership of the project's electric system and all associated funds and assets. Further, the preference power allocation reverted back to the project under the same terms and conditions that existed prior to enactment of Public Law 102-231. The law is retained here, not as Reclamation Law, but as reference material for Reclamation staff who continue to be relied on by congressional staff and others for expertise on the San Carlos Irrigation Project.

**Section 1. [Short title.]**—This Act may be cited as the "San Carlos Indian Irrigation Project Divestiture Act of 1991".

**Sec. 2. [Findings and purpose.]-(a) [Findings.]**—The Congress finds the following:

(1) To provide water for irrigating, first, land allotted to Pima Indians on the Gila River Reservation and, second, other lands in public or private ownership which, in the opinion of the Secretary of the Interior, could be served without diminishing the supply necessary for the Indian lands, Congress, by the Act of June 7, 1924, authorized construction of Coolidge Dam and creation of San Carlos Reservoir on the Gila River in Arizona.

(2) The Secretary, through the San Carlos Irrigation Project administered by the Bureau of Indian Affairs, operates Coolidge Dam and approximately one hundred irrigation wells to provide water to SCIP lands on the Gila River Reservation and to the SCIP lands outside the reservation which is within the San Carlos Irrigation and Drainage District.

(3) A hydroelectric power system was developed at Coolidge Dam pursuant to the Act of March 7, 1928, as amended, to generate power incidental to the use of San Carlos Reservoir for storing irrigation water. The system's primary purpose was to provide power for irrigation pumping on SCIP lands and for BIA agency and school purposes and for irrigation pumping by Apache Indians on the San Carlos Reservation.

December 12, 1991

3728

SAN CARLOS DIVESTITURE ACT OF 1991

(4) SCIP's transmission and distribution system, which has been extended to domestic and commercial users on SCIP lands and to other homes and businesses not on SCIP lands, currently provides service within portions of Pinal, Pima, Maricopa, Graham, and Gila Counties covering approximately 3,000 square miles.

(5) Unexpectedly low and erratic Gila River flows into San Carlos Reservoir since 1928 have limited power generation at Coolidge Dam, causing SCIP to secure additional power through contracts with the Western Area Power Administration, the Salt River Project, and Arizona Public Service Company to meet its customers' needs. Since October 1983, when a flood damaged the switchyard at Coolidge Dam, no power has been generated at the dam.

(6) Much of SCIP's power system needs modernization, with some facilities over sixty years old, well past their design life. However, Federal budgetary and administrative policies have impaired long-range, consistent planning and construction necessary for efficient SCIP operation and maintenance and for timely replacement of obsolete or worn out facilities.

(7) Under current repayment terms, the shared obligation of the San Carlos Irrigation and Drainage District and the Gila River Indian Community to repay the United States for construction of SCIP's hydroelectric power system and certain improvements thereto will not be met until after the year 2010.

(8) The Gila River Indian Community, the San Carlos Apache Indian Tribe, and the San Carlos Irrigation and Drainage District have petitioned the Congress to authorize the Secretary to divest the United States of ownership and responsibility for SCIP's electric power transmission and distribution systems, to settle the outstanding debt owned by the United States in connection with the construction of those systems, to apportion equitably among them SCIP's allocation of Federal power resources, and to take such other actions as necessary to carry out divestiture.

(9) On September 15, 1989, the Gila River Indian Community and the Arizona Public Service Company, and the San Carlos Irrigation and Drainage District, the Arizona Public Service Company, Trico Electric Cooperative, Inc., and Electrical District No. 2 of Pinal County, Arizona, signed Statements of Principles by which divestiture would be implemented between and among them subsequent to enactment of Federal enabling authorities as provided in this Act. The same entities subsequently signed extensions of the Statements of Principles, as amended.

**(b) [Purpose.]**—The purposes of this Act are—(1) to authorize the Secretary to divest the United States of ownership of the electric transmission and distribution system of the San Carlos Irrigation Project;

(2) to provide for the settlement of the debt obligations owed to the United States by the Gila River Indian Community and the San Carlos Irrigation and Drainage District in connection with the construction of the electric transmission and distribution system;

(3) to provide for the reallocation of power resources currently allocated to SCIP from Federal hydroelectric power sources;

December 12, 1991

SAN CARLOS DIVESTITURE ACT OF 1991

3729

(4) to provide funds for the disposal of hazardous waste materials associated with those areas and components of the SCIP electric system transferred to the Gila River Indian Community and the San Carlos Apache Tribe and with those areas and components retained by the Secretary;

(5) to facilitate the implementation of divestiture in an orderly and economic manner, consistent with the desire and intent of the parties to the Statement of Principles and with due regard for the rights and interests of current SCIP employees; and

(6) to assist the Gila River Indian Community and the San Carlos Apache Tribe in their efforts to achieve greater self-determination and economic self-sufficiency. (105 Stat. 1722)

**Sec. 3. [Definitions.]**—For the purposes of this Act—(1) the term "Arizona Public Service Company" means an electric utility corporation organized and existing under the laws of the State of Arizona;

(2) the term "Arizona Corporation Commission" means the entity established by Article 15 of the Arizona Constitution to regulate and supervise public service corporations in the State of Arizona;

(3) the term "Arizona Power Authority" means the entity established under Arizona law to receive and market Arizona's allotted share of power generated at Hoover Dam;

(4) the terms "Electrical District No. 2" and "ED2" mean Electrical District Number 2, an electrical district organized under the laws of the State of Arizona;

(5) the terms "Gila River Indian Community" and "GRIC" mean the governing body of that community of Pima and Maricopa Indians organized pursuant to section 16 of the Act of June 18, 1934 (25 U.S.C. § 476) and occupying the Gila River Reservation in Arizona;

(6) the term "Preference power" means electric power provided to municipalities, other public corporations or agencies, cooperatives, and nonprofit organizations pursuant to the Act of June 17, 1902 (32 Stat. 388), and amendments and supplements thereto, commonly referred to as Reclamation Law;

(7) the term "Present value" means the economic value of a present cash payment utilizing the discount rates and methodology established by the Secretary pursuant to section 5301 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203; 101 Stat. 1330-268);

(8) the terms "San Carlos Apache Tribe" and "SCAT" mean the governing body of that tribe of Indians organized pursuant to section 16 of the Act of June 18, 1934 (25 U.S.C. § 476) and occupying the San Carlos Reservation in Arizona;

(9) the terms "San Carlos Irrigation Project" and "SCIP" mean the project authorized pursuant to the Act of June 7, 1924 (43 Stat. 475), expanded pursuant to the Act of March 7, 1928 (45 Stat. 200, 210), and administered by the Bureau of Indian Affairs;

(10) the terms "San Carlos Irrigation and Drainage District" and "SCIDD" mean an irrigation and drainage district organized under the laws of Arizona;

(11) the term "SCIP electric system" means all electric transmission and distribution facilities, including existing associated easements, owned by the United States, on behalf of SCIP and administered by SCIP's Power Division, except Coolidge Dam, the electric generating facilities within the dam's powerhouse, the lines connecting the powerhouse with the switchyard, together with such switchyard located on land withdrawn for Coolidge Dam;

(12) the term "Secretary" means the Secretary of the Interior;

(13) the term "Statements of Principles" means the document entered into by the Arizona Public Service Company, the San Carlos Irrigation and Drainage District, Trico Electric Cooperative, Inc., and Electrical District No. 2 on September 15, 1989, as amended and extended on January 14, 1991, and the document entered into by the Arizona Public Service Company and the Gila River Indian Community Utility Authority on September 15, 1989, as amended and extended on March 8, 1991, setting forth agreements among the respective parties concerning divestiture of SCIP assets both on and off reservation; and

(14) the terms "Trico Electrical Cooperative" and "TRICO" mean the Trico Electrical Cooperative, a corporation organized under the laws of the State of Arizona. (105 Stat. 1723)

**Sec. 4. [Divestiture.]—(a) [In general.]**—Notwithstanding the Act of September 22, 1961 (25 U.S.C. § 15), the Secretary is directed to transfer the SCIP electric system and associated assets in accordance with the provisions of this Act no later than July 31, 1993.

**(b) [Transfer to GRIC.]**—The Secretary shall transfer to the GRIC all right, title, and interest of the United States in and to that portion of the SCIP electric system located on the Gila River Reservation, including the 5.6-mile section of 69-KV transmission line from Coolidge Substation to the reservation.

**(c) [Transfer to SCAT.]**—The Secretary shall transfer to SCAT all right, title, and interest of the United States in and to that portion of the SCIP electric system located on the San Carlos Apache Reservation.

**(d) [Transfer to SCIDD.]**—Subject to the requirements of section 5(d), the Secretary shall transfer, as is, to SCIDD all right, title, and interest of the United States in and to those portions of the SCIP electric system not transferred under subsection (b) or (c) or otherwise transferred or reserved under subsection (a), (e) or (f), expressly disclaiming all warranties, expressed or implied, including the implied warranties of merchantability and fitness for a particular purpose.

**(e) [Transfer of associated assets.]**—The Secretary shall negotiate an agreement with GRIC, SCAT, and SCIDD providing for the transfer to GRIC, SCAT, and SCIDD of all right, title, and interest of the United States in and to all associated assets of the SCIP electric system not transferred under subsections 4(b), 4(c), and 4(d) of this section, including but not limited to vehicles, tools, hardware, spare parts, poles, transformers, meters, conductors, and other electric system components. The Secretary shall distribute these assets in a manner that

December 12, 1991

SAN CARLOS DIVESTITURE ACT OF 1991

3731

reflects the proportionate number of miles of distribution lines to be transferred to GRIC, SCAT, and SCIDD (including lines provided to SCAT under sections 5(a)(2) and 5(a)(3) of this Act) and retained in accordance with the implementation of the Statements of Principles.

**(f) [Retention of facilities by the United States.]**—The Secretary shall retain ownership of the electric generating facilities located in the powerhouse and switchyard at Coolidge Dam, including lines from the powerhouse to the switchyard.

**(g) [Operation and maintenance.]**—Upon completion of the transfer of the SCIP electric system and associated assets as provided in this Act, the Secretary shall have no responsibility for the operation, maintenance, and repair of such system and associated assets, or for the electric generating facilities within the Coolidge Dam powerhouse. (105 Stat. 1725)

EXPLANATORY NOTE

**1992 Amendments.** Section 6 of the Act of October 24, 1992 (Public Law 102-497, 106 Stat. 3255) amended sections 4 above, and 5, 6, and 10 below by—

(1) deleting in sections 4(a) and 10(b) the date "December 31, 1992" and inserting in lieu thereof the date "July 31, 1993";

(2) inserting immediately before the period at the end of paragraph (1) of subsection 5(a) the phrase "and otherwise administer all customer accounts"; and

(3) deleting "5(a)(2)" in the second sentence of section 6 and inserting in lieu thereof "5(a)(5)".

**Sec. 5. [Allocation of funds.]—(a) [In general.]**—The Secretary shall allocate all funds credited to the SCIP Power Division as of September 30, 1991, as adjusted for activity between September 30, 1991, and the effective date of this Act, including cash and temporary investments managed by the Bureau of Indian Affairs, customer deposits and customer advances held by the Treasury of the United States, reservations for line extensions and installation services, reservations for replacement, funds obligated for future power purchases, unreserved and unrestricted funds, trade and other accounts receivable, and accrued interest income, as follows:

(1) To GRIC, SCAT, and SCIDD, all customer deposits and all customer advances held by the Treasury of the United States, in amounts corresponding to the actual deposits and advances made by the customers who shall be located within the respective areas to be served by GRIC, SCAT, and SCIDD as of the effective date of this Act, together with such information necessary to enable GRIC, SCAT, and SCIDD to credit such deposits and advances to the appropriate customer accounts and otherwise administer all customer accounts.

(2) To SCAT, such sums as may be necessary (not to exceed \$1,200,000) to be used for construction of a 21KV transmission line from Peridot, Arizona, to the community of Bylas on the San Carlos Apache Reservation.

December 12, 1991

3732

SAN CARLOS DIVESTITURE ACT OF 1991

(3) To SCAT, such sums as may be necessary (not to exceed \$160,000) to be used to purchase all right, title, and interest in the electric system presently owned by the Arizona Public Service Company within the exterior boundaries of the San Carlos Apache Reservation and extending from the western boundary of said reservation easterly to the town of Cutter, Arizona.

(4) To a SCIP employee severance fund, to be established by the Secretary, not to exceed \$750,000, solely for the purpose of providing severance pay to SCIP Power Division employees eligible for such pay under applicable Federal law and regulations, except that within 180 days after the effective date of this Act, any funds remaining in the severance fund shall be transferred to GRIC.

(5) To a SCIP reserve account, to be established and administered by the Secretary, \$4,000,000, to be retained by the Secretary until October 1, 1995, at which time the Secretary shall, first, deposit into the Environmental Protection Account established pursuant to section 6 an amount equal to the present value of the SCIP electrical system debt obligation owed by GRIC and its allotted landowners as of September 30, 1991, and second, transfer the balance remaining in the account to GRIC. Prior to October 1, 1995, the Secretary may, in his discretion and pursuant to his authorities under Public Law 93-638 (25 U.S.C. § 450 et seq.), make available to GRIC and SCAT the funds not retained for deposit into the Environmental Protection Account for use in electric system expansion and rehabilitation on their respective reservations and for expenses associated with providing electric service on such reservations.

(6) To GRIC, any funds remaining after the allocations set forth in the preceding paragraphs (1), (2), (3), (4), and (5) to be used for electric system expansion and rehabilitation on the Gila River Reservation and for expenses associated with providing electric utility services on such reservation.

**(b) [Accounting pending divestiture.]**—From the date of enactment of this Act through the date of allocation of funds as provided in this section and section 10, the Secretary shall ensure that no cash, temporary investments, or other funds are transferred from the SCIP Power Division to the SCIP Irrigation Division or to other Bureau of Indian Affairs managed projects, accounts, funds, or activities, and no Power Division funds shall be reserved or obligated for other than routine repairs and maintenance of the SCIP Power Division utility plant and for operation of the Power Division.

**(c) [GRIC debt resolution.]**—Deposit into the Environmental Protection Account of the amount specified in subsection (a)(5) shall constitute full satisfaction of the SCIP electric system debt owed by GRIC or its allotted landowners and shall be cause for the Secretary to cancel any liens against allotted lands of any member of GRIC or against tribal lands within SCIP in connection with such debt.

**(d) [SCIDD debt resolution—Agreement.]**—As a condition precedent to the transfer of the SCIP system and other assets as provided in section 4(d), the SCIDD shall enter into an agreement with the Secretary. Such agreement shall provide that—

December 12, 1991

SAN CARLOS DIVESTITURE ACT OF 1991

3733

(1) SCIDD will pay the Secretary an amount equal to the present value of the SCIP electric system debt obligation owed by SCIDD to the United States as of September 1, 1991, such amount to be paid from the proceeds of SCIDD's sale to the Arizona Public Service Company of various system assets as prescribed by the Statement of Principles entered into by SCIDD;

(2) the total amount to be paid by SCIDD under the agreement shall be paid to the Secretary in annual installments of not less than \$479,000 for the fiscal years beginning with the fiscal year in which this Act takes effect (as provided in section 10) and ending with fiscal year 1995;

(3) SCIDD disclaims any right, title, or interest in SCIP Power Division funds to be allocated pursuant to subsection (a), except for such funds as may be credited to SCIDD pursuant to subsection (a)(1); and

(4) payment by SCIDD to the Secretary of the present value amount specified in paragraph (1) shall constitute full satisfaction of the SCIP electric system debt owed by SCIDD.

**(e) [Deposit into environmental protection account.]**—The Secretary shall deposit the funds paid by SCIDD pursuant to subsection (d)(1) into the Environmental Protection Account established under section 6.

**(f) [SCAT debt resolution.]**—The Secretary shall waive any debt for electrical service (not to exceed \$165,000) which SCIP claims is owed by the San Carlos Apache Tribal Utility Authority or SCAT as of September 1, 1991. (105 Stat. 1725)

**Sec. 6. [Environmental protection account.]**—The Secretary shall establish an account, to be administered by the Bureau of Indian Affairs, to fund such efforts as may be necessary and appropriate to dispose of hazardous waste materials associated with those areas and components of the SCIP electric system transferred to GRIC and SCAT and with those areas and components retained by the Secretary. Beginning on October 1, 1991, funds deposited into this account pursuant to sections 5(a)(5) and 5(e) shall be used to carry out the purposes of this section until exhausted. Any funds remaining in the account after October 1, 2005, shall revert to the general fund of the United States Treasury. The Secretary shall be responsible for any hazardous waste disposal required by this section not covered by the funds deposited pursuant to sections 5(a)(5) and 5(e). (105 Stat. 1727)

**Sec. 7. [Federal power reallocation.]—(a) [Reallocation of resources.]**—Upon the request of the Secretary, the Secretary of Energy shall enter into such agreements as are necessary to reallocate SCIP's allocation of Federal power resources—capacity and energy—as provided in this section.

**(b) [Successors in interest.]**—The Secretary of Energy shall treat GRIC, SCIDD, and SCAT as successors in interest to SCIP in reallocating SCIP's allocation of capacity and energy from the Parker-Davis Project (the two projects consolidated by the Act of May 28, 1954 (Chapter 241; 68 Stat. 143)) and the Colorado River Storage Project (43 U.S.C. § 620 et seq.), including capacity and energy available pursuant to the Memorandum of Understanding numbered 14-06-300-2632 and Memorandum of Understanding numbered

DE-MS65-80WP 39041 between the Western Area Power Administration, Department of Energy, and the Bureau of Indian Affairs, Department of the Interior, and any other agreement to provide preference power to SCIP prior to December 31, 1992.

**(c) [Proportions assigned.]**—The SCIP allocations of winter and summer capacity and energy shall be assigned to GRIC, SCIDD, and SCAT in accordance with the proportions set forth in the table included in the report of the Senate Select Committee on Indian Affairs on this Act.

**(d) [Rates.]**—Preference power—capacity and energy—shall be delivered to GRIC, SCAT, and SCIDD pursuant to the allocations provided for in this section at the rate established for preference power as determined in accordance with ratemaking procedures established by the Department of Energy.

**(e) [Boulder Canyon Project.]**—The Bureau of Indian Affairs shall assign its contract with the Arizona Power Authority for capacity and energy from the Boulder Canyon Project (43 U.S.C. § 617 et seq.; 45 Stat. 1057) in accordance with the proportions referred to in subsection (c) and the Secretary shall request the Arizona Power Authority to take all necessary actions required to effectuate such assignment in accordance with the contract dated as of September 15, 1986, between the Arizona Power Authority and the SCIP.

**(f) [Long-term power supply—Rates.]**—The Secretary shall enter into an agreement with GRIC and SCIDD to provide a long-term power supply to the irrigation wells and pumps installed by SCIP to provide water to SCIP lands on and off the lands of GRIC. The rate for the electricity supplied by GRIC and SCIDD shall be based on the average cost per kilowatt hour for power purchased by GRIC and SCIDD from the Parker-Davis Project and marketed by the Western Area Power Administration, plus an allowance for the cost of operating and maintaining the transmission and distribution systems of GRIC and SCIDD, including administrative costs and reserves, as long as such power is made available to GRIC and SCIDD in quantities sufficient to meet SCIP's pumping requirements. The rate shall be reviewed and adjusted annually to reflect any changes in the average cost of power purchased by the Parker-Davis Project and the actual costs incurred by GRIC and SCIDD to operate and maintain the transmission and distribution systems. (105 Stat. 1728)

**Sec. 8. [Federal employees.]—(a) [Election to continue certain benefits.]**—Any Federal employee at SCIP whose position is terminated by reason of this Act who, within thirty days of such termination, is employed by the San Carlos Apache Tribal Utility Authority or the Gila River Indian Community Utility Authority is entitled, if the employee and the respective authority so elect, to the following:

- (1) To retain coverage, rights, and benefits under subchapter I of chapter 81 (relating to compensation for work injuries) of title 5, United States Code, and for this purpose employment with the tribal authority shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal authority any payment (including an allowance, gratuity, payment under an insurance policy for

December 12, 1991

SAN CARLOS DIVESTITURE ACT OF 1991

3735

which the premium is wholly paid by the tribal authority, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) Payments on account of injury or disability shall be credited against disability compensation payable to the injured employee.

(B) Payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 (relating to retirement) or chapter 84 (relating to Federal employees' retirement system) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal authority are currently deposited in the Civil Service Retirement and Disability Fund (pursuant to chapter 83 or chapter 84 of title 5, United States Code) and, if appropriate, the Thrift Savings Fund (pursuant to section 8432 of title 5, United States Code), and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 or 8411 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal authority remain to his credit for retirement purposes during covered service with the tribal authority.

(3) To retain coverage, rights, and benefits under chapter 89 (relating to health insurance) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal authority are currently deposited in the Employee's Health Benefit Fund (pursuant to section 8909 of title 5, United States Code), and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

(4) To retain coverage, rights, and benefits under chapter 87 (relating to life insurance) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal authority are currently deposited in the Employee's Life Insurance Fund (pursuant to section 8714 of title 5, United States Code), and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United State Code.

**(b) [Agency contributions.]**—During the period an employee is entitled to the coverage, rights, and benefits pursuant to subsection (a), the tribal authority employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of subsection (a).

**(c) [Priority placement.]**—The Secretary shall establish and maintain a Departmental Priority Placement Program for SCIP employees serving

competitive positions under career or career-conditional appointments who have satisfactory levels of performance and who receive a notice of involuntary separation as a result of divestiture of the SCIP electric system pursuant to the provisions of this Act. Employees must apply in writing for placement into the program not later than thirty calendar days after receipt of notice of involuntary separation. Employees shall be entitled to be placed on a priority basis into vacant positions outside the competitive area from which they are separated, at the same grade or level they last held in the agency and for which they are qualified, based upon the availability of such positions.

**(d) [Definitions.]**—For the purposes of this section—(1) the term ‘employee’ means an employee as defined in section 2106 of title 5, United States Code;

(2) the term ‘agency’ means the Bureau of Indian Affairs; and

(3) the term ‘involuntary separation’ means any separation from agency employment against the will and without the consent of the employee.

**(e) [Regulations.]**—The Secretary may prescribe regulations necessary to carry out the provisions of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate. (105 Stat. 1728)

**Sec. 9.[ Miscellaneous.]—(a) [Effect on existing rights.]**—Nothing in this Act shall—

(1) affect any right of the City of Mesa, Arizona, to deliver electric service to lands currently owned by the City of Mesa in Pinal County, Arizona; or

(2) be construed as having any effect on the right of any Arizona incorporated rural electric cooperative to seek to provide electric service pursuant to existing Federal or State law.

**(b) [Approval by Arizona Corporation Commission.]**—Approval by the Arizona Corporation Commission of the allocation of electric service areas and systems as set forth in the Statements of Principles shall constitute recognition and confirmation of the financial viability and territorial integrity of the signatories to the Statements of Principles within the meaning of the provisions of the Rural Electrification Act of May 20, 1936, as amended (7 U.S.C. § 901 et seq.; 49 Stat. 1363; 63 Stat. 948).

**(c) [Existing obligation of the United States.]**—Nothing in this Act shall affect any obligation of the United States to SCAT to provide power at the rate of 2 mills per kilowatt hour for irrigation pumping and agency and school purposes pursuant to the Act of March 7, 1928 (45 Stat. 200, 210).

**(d) [SCIP Irrigation Division.]**—The Secretary is authorized to expend not more than \$1,200,000 from funds credited to the SCIP Irrigation Division to acquire not more than ten acres of land and to acquire or construct such facilities as may be necessary and appropriate to provide for the efficient maintenance, operation, and administration of the SCIP Irrigation Division. (105 Stat. 1730)

**Sec. 10.[ Effective date.]—(a) [In general.]**—Transfer of SCIP facilities and assets to GRIC, SCAT, and SCIDD under section 4 and allocation of funds under section 5 shall not take effect until such time as the Secretary issues a statement of findings that—

December 12, 1991

SAN CARLOS DIVESTITURE ACT OF 1991

3737

(1) the Arizona Corporation Commission has approved, pursuant to Arizona law, the allocation of electric service areas and systems as set forth in the Statements of Principles;

(2) the Secretary has entered into an agreement with GRIC, SCAT, and SCIDD providing for the division of assets as provided in section 4(e);

(3) the Secretary has entered into an agreement with GRIC and SCIDD providing for a long-term power supply to SCIP pumps as provided in section 7(f);

(4) all agreements necessary for the reallocation of preference power as required by section 7 have been executed and the Bureau of Indian Affairs has assigned its contract with the Arizona Power Authority to GRIC, SCAT and SCIDD in accordance with the terms of such contract and the proportions prescribed in section 7;

(5) the Arizona Public Service Company has terminated its existing wholesale power agreement with SCIP and released SCIP from paying any termination charges under such agreement; and

(6) SCIDD has entered into the agreement with the Secretary as required in section 5(d).

**(b) [Reversion if requirements not met.]**—Unless all of the conditions and requirements set forth in subsection (a) have been met by July 31, 1993, all contracts entered into pursuant to this Act shall be null and void, the United States shall retain ownership and control of the SCIP electric system and all associated funds and assets as it did before the date of the enactment of this Act, and any preference power reallocation made pursuant to section 7 of this Act shall revert back to the SCIP under the same terms and conditions that existed prior to the date of the enactment of this Act.

EXPLANATORY NOTES

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

**Legislative History.** H.R. 1476, Public Law 102-231 in the 102<sup>nd</sup> Congress. Reported in the House from Interior and Insular Affairs; H. R.

Repts. No. 102-360. Passed the House November 23, 1991. Passed the Senate November 25, 1991.

March 5, 1992

3738

**RECLAMATION STATES EMERGENCY DROUGHT  
RELIEF ACT OF 1991**

An Act to provide emergency drought relief to the Reclamation States, and for other purposes. (Act of March 5, 1992, Public Law 102-250, 106 Stat. 53, 43 U.S.C. § 2201.)

**Section 1. [Short title.]** This Act may be cited as the "Reclamation States Emergency Drought Relief Act of 1991".

**Sec. 2. [Definitions.]—**As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Federal Reclamation laws" means the Act of June 17, 1902 (32 Stat. 388) and Acts supplementary thereto and amendatory thereof.

(3) The term "Federal Reclamation project" means any project constructed or funded under Federal Reclamation law. Such term includes projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044).

EXPLANATORY NOTE

**References in the Text.** The Small Reclamation Projects Act of 1956, Act of August 6, 1956 (ch. 972, 70 Stat. 1044) appears in Volume I at page 1331. Amendments of appear in Volume IV at pages 2641, 2932, 3203, and 3345. Amendments and annotations appear in Supplement I, pages S268-S278 and in Supplement II, page S875.

TITLE I—DROUGHT PROGRAM

**Sec. 101. [Assistance during drought; water purchases.]—**

**(a) [Construction, management, and conservation.]—**Consistent with existing contractual arrangements and applicable State and applicable Federal law, and without further authorization, the Secretary is authorized to undertake construction, management, and conservation activities that will minimize, or can be expected to have an effect in minimizing, losses and damages resulting from drought conditions. Any construction activities undertaken pursuant to the authority of this subsection shall be limited to temporary facilities designed to minimize losses and damages from drought conditions, except that wells drilled to minimize losses and damages from drought conditions may be permanent facilities. (43 U.S.C. § 2211.)

**(b) [Assistance to willing buyers and sellers.]—**In order to minimize losses and damages resulting from drought conditions, the Secretary may provide nonfinancial assistance to willing buyers in their purchase of available water supplies from willing sellers.

March 5, 1992

RECLAMATION STATES EMERGENCY DROUGHT RELIEF 3739

**(c) [Water purchases by Bureau.]**—In order to minimize losses and damages resulting from drought conditions, the Secretary may purchase water from willing sellers, including, but not limited to, water made available by Federal Reclamation project contractors through conservation or other means with respect to which the seller has reduced the consumption of water. Except with respect to water stored, conveyed or delivered to Federal and State wildlife habitat, the Secretary shall deliver such water pursuant to temporary contracts under section 102: *Provided*, That any such contract shall require recover [sic] of any costs, including interest if applicable, incurred by the Secretary in acquiring such water.

**(d) [Water banks.]**—In order to respond to a drought, the Secretary is authorized to participate in water banks established by a State.

**Sec. 102. [Availability of water on a temporary basis.]—(a) [General authority.]**—In order to mitigate losses and damages resulting from drought conditions, the Secretary may make available, by temporary contract, project and nonproject water, and may permit the use of facilities at Federal Reclamation projects for the storage or conveyance of project or nonproject water, for use both within and outside an authorized project service area. (106 Stat. 54; 43 U.S.C. § 2212.)

**(b) [Special provisions applicable to temporary water supplies provided under this section.]—(1) [Temporary supplies.]**—Each temporary contract for the supply of water entered into pursuant to this section shall terminate no later than two years from the date of execution or upon a determination by the Secretary that water supply conditions no longer warrant that such contracts remain in effect, whichever occurs first. The costs associated with any such contract shall be repaid within the term of the contract.

**(2) [Ownership and acreage limitations.]**—Lands not subject to Reclamation law that receive temporary irrigation water supplies under temporary contracts under this section shall not become subject to the ownership and acreage limitations or pricing provisions of Federal Reclamation law because of the delivery of such temporary water supplies. Lands that are subject to the ownership and acreage limitations of Federal Reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies.

**(3) [Treatment under Reclamation Reform Act of 1982.]**—No temporary contract entered into by the Secretary under this section shall be treated as a "contract" as that term is used in sections 203(a) and 220 of the Reclamation Reform Act of 1982 (Public Law 97-293).

EXPLANATORY NOTE

**References in the Text.** The Reclamation Reform Act of 1982, Act of October 12, 1982 (Public Law 97-293, 96 Stat. 1263) appears in Volume IV at page 3334. The 1982 Act also appears, as amended, in Supplement II at page S1092.

March 5, 1992

3740 RECLAMATION STATES EMERGENCY DROUGHT RELIEF

**(4) [Amendments of existing contracts.]**—Any amendment to an existing contract to allow a contractor to carry out the provisions of this title shall not be considered a new and supplemental benefit for purposes of the Reclamation Reform Act of 1982 (Public Law 97-293).

**(c) [Contract price.]**—The price for project water, other than water purchased pursuant to section 101(c), delivered under a temporary contract entered into by the Secretary under this section shall be at least sufficient to recover all Federal operation and maintenance costs and administrative costs, and an appropriate share of capital costs, including interest on such capital costs allocated to municipal and industrial water, except that, for project water delivered to nonproject landholdings, the price shall include full cost (as defined in section 202(3) of the Reclamation Reform Act of 1982 (Public Law 97-293; 96 Stat. 1263; 43 U.S.C. § 390bb)). For all contracts entered into by the Secretary under the authority of this title—

(1) the interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs expended pursuant to this Act shall be at a rate to be determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with remaining periods to maturity of one year occurring during the last month of the fiscal year preceding the date of execution of the temporary contract;

(2) in the case of existing facilities the rate as authorized for that Federal Reclamation project;

(3) in the absence of such authorized rate, the interest rate as determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction was initiated on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which were neither due nor callable for redemption for fifteen years from date of issue: *Provided*, That for all deliveries of water for municipal and industrial purposes from existing facilities to nonproject contractors, the rate shall be as set forth in paragraph (1) of this subsection.

**(d) [Fish and wildlife.]**—The Secretary may make water from Federal Reclamation projects and nonproject water available on a nonreimbursable basis for the purposes of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or the operation of a Federal Reclamation project during drought conditions. The Secretary may store and convey project and nonproject water for fish and wildlife purposes, and may provide conveyance of any such water for both State and Federal wildlife habitat and for habitat held in private ownership. The Secretary may make available water for these purposes outside the authorized project service area. Use of the Federal storage and conveyance facilities for these purposes shall be on a nonreimbursable basis. Water made available by the Secretary in 1991

March 5, 1992

RECLAMATION STATES EMERGENCY DROUGHT RELIEF 3741

from the Central Valley Project, California, to the Grasslands Water District for the purpose of fish and wildlife shall be nonreimbursable.

**(e) [Nonproject water.]**—The Secretary is authorized to store and convey nonproject water utilizing Federal Reclamation project facilities for use outside and inside the authorized project service area for municipal and industrial uses, fish and wildlife, and agricultural uses. Except in the case of water supplied for fish and wildlife, which shall be nonreimbursable, the Secretary shall charge the recipients of such water for such use of Federal Reclamation project facilities at a rate established pursuant to section 102(c) of this Act.

**(f) [Reclamation Fund.]**—The payment of capital costs attributable to the sale of project or nonproject water or the use of Federal Reclamation project facilities shall be covered into the Reclamation Fund and be placed to the credit of the project from which such water or use of such facilities is supplied.

**Sec. 103. [Loans.]**—The Secretary of the Interior is authorized to make loans to water users for the purposes of undertaking construction, management, conservation activities, or the acquisition and transportation of water consistent with State law, that can be expected to have an effect in mitigating losses and damages, including those suffered by fish and wildlife, resulting from drought conditions. Such loans shall be made available under such terms and conditions as the Secretary deems appropriate: *Provided*, That the Secretary shall not approve any loan unless the applicant can demonstrate an ability to repay such loan within the term of the loan: *Provided further*, That for all loans approved by the Secretary under the authority of this section, the interest rate shall be the rate determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with periods to maturity comparable to the repayment period of the loan. The repayment period for loans issued under this section shall not exceed fifteen years. The repayment period for such loans shall begin when the loan is executed. Sections 203(a) and 220 of the Reclamation Reform Act of 1982 and sections 105 and 106 of Public Law 99-546 shall not apply to any contract to repay such loan. The Secretary shall notify the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives in writing of any loan which the Secretary intends to approve not less than thirty days prior to granting final approval. (106 Stat. 55; 43 U.S.C. § 2213.)

EXPLANATORY NOTES

**References in the Text.** The Reclamation Reform Act of 1982, Act of October 12, 1982 (Public Law 97-293, 96 Stat. 1263) appears in Volume IV at page 3334 and as amended in Supplement II at page S1090.

Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3050) appears in Volume V at page

3512.

**1994 Amendment.** Section 16(a)(6) of the Act of November 2, 1994 (Public Law 103-437) amended section 103 by striking "Interior and Insular Affairs" each place it appears and substituting "Natural Resources". Extracts of the 1994 Act appear in Volume V at page 4061.

March 5, 1992

3742 RECLAMATION STATES EMERGENCY DROUGHT RELIEF

**Sec. 104. [Applicable period of drought program.]—(a) [In general.]**—The programs and authorities established under this title shall become operative in any Reclamation State only after the Governor or Governors of the affected State or States, or on a reservation, when the governing body of the affected tribe has made a request for temporary drought assistance and the Secretary has determined that such temporary assistance is merited, or upon the approval of a drought contingency plan as provided in title II of this Act.

**(b) [States coordination with BPA.]**—If a Governor referred to in subsection (a) is the Governor of the State of Washington, Oregon, Idaho, or Montana, the Governor shall coordinate with the Administrator of the Bonneville Power Administration before making a request under subsection (a).

**(c) [Termination of authority.]**—The authorities established under this title shall terminate ten years after the date of enactment of this Act. (106 Stat. 56; 43 U.S.C. § 2214.)

TITLE II—DROUGHT CONTINGENCY PLANNING

**Sec. 201. [Identification of opportunities for water supply conservation, augmentation and use.]**—The Secretary is authorized to conduct studies to identify opportunities to conserve, augment, and make more efficient use of water supplies available to Federal Reclamation projects and Indian water resource developments in order to be prepared for and better respond to drought conditions. The Secretary is authorized to provide technical assistance to States and to local and tribal government entities to assist in the development, construction, and operation of water desalinization projects, including technical assistance for purposes of assessing the technical and economic feasibility of such projects. (106 Stat. 56; 43 U.S.C. § 2221.)

**Sec. 202. [Drought contingency plans.]**—The Secretary, acting pursuant to the Federal Reclamation laws, utilizing the resources of the Department of the Interior, and in consultation with other appropriate Federal and State officials, Indian tribes, public, private, and local entities, is authorized to prepare or participate in the preparation of cooperative drought contingency plans (hereinafter in this title referred to as "contingency plans") for the prevention or mitigation of adverse effects of drought conditions. (106 Stat. 56; 43 U.S.C. § 2222.)

**Sec. 203. [Plan elements.]—(a) [Plan provisions.]**—Elements of the contingency plans prepared pursuant to section 202 may include, but are not limited to, any or all of the following:

(1) Water banks.

(2) Appropriate water conservation actions.

(3) Water transfers to serve users inside or outside authorized Federal Reclamation project service areas in order to mitigate the effects of drought.

March 5, 1992

RECLAMATION STATES EMERGENCY DROUGHT RELIEF 3743

(4) Use of Federal Reclamation project facilities to store and convey nonproject water for agricultural, municipal and industrial, fish and wildlife, or other uses both inside and outside an authorized Federal Reclamation project service area.

(5) Use of water from dead or inactive reservoir storage or increased use of ground water resources for temporary water supplies.

(6) Water supplies for fish and wildlife resources.

(7) Minor structural actions.

**(b) [Federal Reclamation projects.]**—Each contingency plan shall identify the following two types of plan elements related to Federal Reclamation projects:

(1) Those plan elements which pertain exclusively to the responsibilities and obligations of the Secretary pursuant to Federal Reclamation law and the responsibilities and obligations of the Secretary for a specific Federal Reclamation project.

(2) Those plan elements that pertain to projects, purposes, or activities not constructed, financed, or otherwise governed by the Federal Reclamation law.

**(c) [Drought levels.]**—The Secretary is authorized to work with other Federal and State agencies to improve hydrologic data collection systems and water supply forecasting techniques to provide more accurate and timely warning of potential drought conditions and drought levels that would trigger the implementation of contingency plans.

**(d) [Compliance with law.]**—The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), section 715(a) of the Water Resource Development Act of 1986 (33 U.S.C. § 2265(a)), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law.

**(e) [Review.]**—The contingency plans shall include provisions for periodic review to assure the adequacy of the contingency plan to respond to current conditions, and such plans may be modified accordingly.

EXPLANATORY NOTE

**References 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 note.) appears in Volume IV at page 2493.

Section 715(a) of the Water Resource Development Act of 1986, Act of November 17, 1986 (Public Law 99-662, 100 Stat. 4082)

appears among the extracts from the Act in Volume V at page 3532.

The Fish and Wildlife Coordination Act, Act of August 14, 1946 (ch. 965, 60 Stat. 1080) appears in Volume II at page 839. Amendments appear at pages 1434 and 1823. Annotations appear in Supplement I at page S167.

**Sec. 204. [Recommendations.]—(a) [Approval.]**—The Secretary shall submit each plan prepared pursuant to section 202 of the Congress, together with the

March 5, 1992

3744 RECLAMATION STATES EMERGENCY DROUGHT RELIEF

Secretary's recommendations, including recommendations for authorizing legislation, if needed.

**(b) [Pacific Northwest Region.]**—A contingency plan under subsection (a) for the State of Washington, Oregon, Idaho, or Montana, may be approved by the Secretary only at the request of the Governor of the affected State in coordination with the other States in the region and the Administrator of the Bonneville Power Administration. (106 Stat. 57; 43 U.S.C. § 2223.; 43 U.S.C. § 2224.)

**Sec. 205. [Reclamation Drought Response Fund.]**—The Secretary shall undertake a study of the need, if any, to establish a Reclamation Drought Response Fund to be available for defraying those expenses which the Secretary determines necessary to implement plans prepared under section 202 and to make loans for nonstructural and minor structural activities for the prevention or mitigation of the adverse effects of drought. (106 Stat. 58; 43 U.S.C. § 2225.)

**Sec. 206. [Technical assistance and transfer of precipitation management technology.]**—**(a) [Technical assistance.]**—The Secretary is authorized to provide technical assistance for drought contingency planning in any of the States not identified in section 1 of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), and the District of Columbia, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship, the Republic of Palau, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

**(b) [Technology Transfer Program.]**—The Secretary is authorized to conduct a Precipitation Management Technology Transfer Program to help alleviate problems caused by precipitation variability and droughts in the West, as part of a balanced long-term water resources development and management program. In consultation with State, tribal, and local water, hydropower, water quality and instream flow interests, areas shall be selected for conducting field studies cost-shared on a 50-50 basis to validate and quantify the potential for appropriate precipitation management technology to augment stream flows. Validated technologies shall be transferred to non-Federal interests for operational implementation. (106 Stat. 58; 43 U.S.C. § 2226.)

TITLE III—GENERAL AND MISCELLANEOUS PROVISIONS

**Sec. 301. [Authorization of appropriations.]**—Except as otherwise provided in section 303 of this Act (relating to temperature control devices at Shasta Dam, California), there is authorized to be appropriated not more than \$90,000,000 in total for fiscal years 1992, 1993, 1994, 1995, 1996, and 1997. (106 Stat. 58, 110 Stat. 2992; 43 U.S.C. § 2241.)

March 5, 1992

RECLAMATION STATES EMERGENCY DROUGHT RELIEF 3745

EXPLANATORY NOTE

**1996 Amendment.** The Act of September 30, 1996 (Public Law 104-206, 110 Stat. 2984) amended section 301 above by inserting "1996, and 1997" in lieu of "and 1996". Extracts from the 1996 Act appear in Volume V at page 4083.

**Sec. 302. [Authority of Secretary.]**—The Secretary is authorized to perform any and all acts and to promulgate such regulations as may be necessary and appropriate for the purpose of implementing this Act. In carrying out the authorities under this Act, the Secretary shall give specific consideration to the needs of fish and wildlife, together with other project purposes, and shall consider temporary operational changes which will mitigate, or can be expected to have an effect in mitigating, fish and wildlife losses and damages resulting from drought conditions, consistent with the Secretary's other obligations. (106 Stat. 58; 43 U.S.C. § 2242.)

**Sec. 303. [Temperature control at Shasta Dam, Central Valley Project, California—Appropriation authorization.]**—The Secretary is authorized to complete the design and specifications for construction of a device to control the temperature of water releases from Shasta Dam, Central Valley Project, California, and to construct facilities needed to attach such device to the dam. There is authorized to be appropriated to carry out the authority of this section not more than \$12,000,000. (106 Stat. 59; 43 U.S.C. § 2243.)

**Sec. 304. [Effect of act on other laws.]—(a) [Conformity with state and Federal law.]**—All actions taken pursuant to this Act pertaining to the diversion, storage, use, or transfer of water shall be in conformity with applicable State and applicable Federal law.

**(b) [Effect on jurisdiction, authority, and water rights.]**—Nothing in this Act shall be construed as expanding or diminishing State, Federal, or tribal jurisdiction or authority over water resources development, control, or water rights.

**Sec. 305. [Excess storage and carrying capacity—Contracts.]**—The Secretary is authorized to enter into contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities, pursuant to the Act of February 21, 1911 (43 U.S.C. § 523); for the impounding, storage, and carriage of nonproject water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes using any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California, the Truckee Storage Project, and the Washoe Project, California and Nevada. The Secretary is further authorized to enter into contracts for the exchange of water for the aforementioned purposes using facilities associated with the Cachuma Project, California. (106 Stat. 59; 43 U.S.C. § 2245.)

EXPLANATORY NOTE

March 5, 1992

### 3746 RECLAMATION STATES EMERGENCY DROUGHT RELIEF

**References in the Text.** The Act of February 21, 1911 (ch. 141, 36 Stat. 925; 43 U.S.C. § 523.) appears in Volume I at page 166. Annotations appear in Supplement I at page S41.

**Sec. 306. [Report.]**—There shall be included as part of the President’s annual budget submittal to the Congress a detailed report on past and proposed expenditures and accomplishments under this Act.

**Sec. 307. [Federal Reclamation laws.]**—This Act shall constitute a supplement to the Federal Reclamation laws. (1043 U.S.C. § 2244; 43 U.S.C. § 2246; 43 U.S.C. § 2247.)

#### EXPLANATORY NOTE

**Legislative History.** H.R. 355, Public Law 102-250 in the 102<sup>nd</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Rept. No. 102-21, Pt. 1. Passed House March 21, 1991. Reported in Senate from Energy and Natural Resources; S. Rept. No. 102-185. Passed Senate, amended October 31, 1991. Senate receded from its amendment with another amendment November 27, 1991. House concurred in Senate amendment February 19, 1992.

September 30, 1992

3747

**NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS  
SETTLEMENT ACT OF 1992**

An Act to provide for the settlement of the water rights claims of the Northern Cheyenne Tribe, and for other purposes. (Act of September 30, 1992, Public Law 102-374, 106 Stat. 1186, as amended by section 1 of the Act of May 31, 1994, Public Law 103-263, 108 Stat. 707)

**Section 1. [ Short title.]**—This Act may be cited as the "Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992".

**Sec. 2. [Purposes of Act.]**—(a) **[Purposes.]**—The purposes of this Act are:

(1) to achieve a fair, equitable, and final settlement of all claims to Federal reserved water rights in the State of Montana of—

(A) the Northern Cheyenne Tribe and its members and allottees; and

(B) the United States on behalf of the Northern Cheyenne Tribe and its members and allottees;

(2) to approve, ratify and confirm the Water Rights Compact entered into by the Northern Cheyenne Tribe and the State of Montana on June 11, 1991;

(3) to direct the Secretary of the Interior to enter into a cooperative agreement with the State of Montana for the planning, environmental compliance, design, and construction of the Tongue River Dam Project in order to—

(A) implement the Compact's settlement of the Tribe's reserved water rights claims in the Tongue River Basin;

(B) protect existing tribal contract water rights in the Tongue River Basin;

(C) provide 20,000 acre-feet per year of additional storage water for allocation to the Tribe and to allow the State to implement its responsibilities to correct identified Tongue River Dam safety inadequacies; and

(D) provide for the conservation and development of fish and wildlife resources in the Tongue River Basin;

(4) to provide for the enhancement of fish and wildlife habitat in the Tongue River Basin;

(5) to authorize certain modifications to the purposes and operation of the Big Horn Reservoir in order to implement the Compact's settlement of the Tribe's reserved water rights claims; and

(6) to authorize the Secretary of the Interior to take such other actions as are necessary to implement the Compact.

**Sec. 3. [Definitions.]**—As used in this Act: (1) **[Allottee.]**—The term "allottee" means any person who owns land in trust on the Northern Cheyenne Reservation.

(2) **[Compact.]**—The term "Compact" means the Water Rights Compact entered into on June 11, 1991, by the Northern Cheyenne Tribe and the State of Montana.

September 30, 1992

3748 NORTHERN CHEYENNE INDIAN RESERVED WATER

**(3) [Northern Cheyenne Fund.]**—The term "Northern Cheyenne Fund" means the Northern Cheyenne Indian Reserved Water Rights Settlement Trust Fund established by section 6.

**(4) [Reservation.]**—The term "Reservation" means the Northern Cheyenne Reservation as established by Executive orders of November 26, 1884 and March 19, 1900.

**(5) [Secretary.]**—The term "Secretary" means the Secretary of the Interior.

**(6) [State.]**—The term "State" means the State of Montana.

**(7) [State water contracts.]**—The term "State water contracts" means contracts with the Montana Department of Natural Resources and Conservation (DNRC), or its successor State agency, to receive stored water from the National Resources and Conservation's storage rights in the Tongue River Reservoir.

**(8) [Tongue River Dam Project.]**—The term "Tongue River Dam Project" means the project, conducted pursuant to the cooperative agreements between the Bureau of Reclamation and the State of Montana authorized by this Act and subject to conditions contained in the Compact and in the record of decision after completion of environmental review, to repair and enlarge the Tongue River Dam.

**(9) [Tribal water right.]**—The term "tribal water right" means the tribal water right as defined in the Compact.

**(10) [Tribe.]**—The term "Tribe" means the Northern Cheyenne Tribe. (106 Stat. 1187)

**Sec. 4. [Ratification of Compact.]—(a) [In general.]**—Except as modified by this Act, the Water Rights Compact entered into by the Northern Cheyenne Tribe and the State of Montana is hereby approved, ratified, and confirmed.

EXPLANATORY NOTE

**Reference in the Text.** The Water Rights Compact referenced above does not appear herein.

**(b) [Implementation.]**—The Secretary shall implement the Compact as provided in this Act.

**(c) [Entry of decree—Effective date.]**—Except for authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and the authorization for environmental compliance activities for the Tongue River Dam Project contained in subsection 7(e), the authorization of appropriations contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section. Notwithstanding the provisions of Article V. 2. of the Compact, for the purposes of the proceeding involving such a decree, the effective date of the Compact shall be the date of the enactment of this Act. (106 Stat. 1187; Act of May 31, 1994, 108 Stat. 707)

September 30, 1992

NORTHERN CHEYENNE INDIAN RESERVED WATER 3749

EXPLANATORY NOTE

**1994 Amendment.** Section 1(b) of the Act of May 31, 1994 (Public Law 103-263, 108 Stat. 707) amended the first sentence of section 4(c) to read as it appears above. Prior to amendment, it read "Except for the authorizations contained in subsections 7(b)(1) and 7(b)(2), the authorization of appropriations contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section."  
Section 1(c) of the 1994 Act provided that "The amendments made by this section shall be considered to have taken effect on September 30, 1992." The 1994 Act appears in Volume V at page 4009.

**(d) [Form of decree.]**—No later than 180 days after the date of the enactment of this Act, the United States, the Tribe, and the State of Montana shall jointly petition the Montana water court to enter and approve the "Proposed Decree" agreed to by the United States, the Tribe, and the State of Montana on May 5, 1992, or any amended version thereof. (106 Stat. 1187)

**Sec. 5. [Use and transfer of the tribal water right.]—(a) [Administration and enforcement.]**—As provided in the Compact, until the adoption and approval of a tribal water code, the Secretary shall administer and enforce the tribal water right.

**(b) [Members and allottees.]**—Any entitlement to reserved water of any tribal member or allottee shall be satisfied solely from the water secured to the Tribe by the Compact and shall be governed by the terms and conditions thereof. Such entitlement shall be administered by the Tribe pursuant to a tribal water code developed and adopted pursuant to Article III.A. of the Compact, or by the Secretary pending the adoption and approval of the tribal water code.

**(c) [Transfer of the tribal water right.]—(1) [Contracts.]**—Subject to paragraph (2), the Northern Cheyenne Tribe, or persons or entities authorized by the Tribe, may enter into a service contract, lease, exchange, or other agreement providing for the delivery, use, or transfer of the tribal water right confirmed to the Tribe in the Compact.

**(2) [Limitations.]**—Any service contract, lease, exchange, or other agreement entered into under subsection (c)(1) shall be subject to approval by the Secretary, and the limitations and conditions set forth in the Compact, and may not permanently alienate any portion of the tribal water right. (106 Stat. 1188)

**Sec. 6. [Northern Cheyenne Indian Reserved Water Rights Settlement Trust Fund.]—(a) [Establishment of fund.]**—There is established in the Treasury of the United States a trust fund to be known as the "Northern Cheyenne Indian Reserved Water Rights Settlement Trust Fund".

**(b) [Expenditures from Northern Cheyenne Fund.]**—Amounts in the Northern Cheyenne Fund shall be available, without fiscal year limitations, to the Secretary for expenditure by the Secretary or by the Tribe in accordance with the provisions of this Act.

September 30, 1992

3750 NORTHERN CHEYENNE INDIAN RESERVED WATER

**(c) [Contents of Northern Cheyenne Fund.]**—The Northern Cheyenne Fund shall consist of such amounts as are appropriated to it in accordance with the authorization provided by this Act, together with such amounts credited to it in accordance with section 7(e).

**(d) [Use of Northern Cheyenne Fund.]**—The Tribe shall make \$11,500,000 available from the Northern Cheyenne Fund to the State of Montana as a loan to assist financing Tongue River Dam Project costs, and such loan shall be repaid by the State to the Tribe. All other moneys appropriated to the Northern Cheyenne Fund pursuant to section 7(a), together with interest credited thereto, may be used by the Tribe for—

- (1) land and natural resources administration, planning, and development within the Reservation;
- (2) land acquisition by the Tribe within the Reservation; or
- (3) any other purpose determined by the Tribe.

**(e) [Per capita payments.]**—Funds within the Northern Cheyenne Fund shall not be distributed on a per capita basis to members of the Tribe.

**(f) [Congressional intent.]**—Nothing in this Act is intended—(1) to alter the trust responsibility of the United States to the Tribe; or

(2) to prohibit the Tribe from seeking additional authorization or appropriation of funds for tribal programs or purposes.

**Sec. 7. [Authorization of appropriations.]—(a) [Tribal funds.]**—There are authorized to be appropriated to the Northern Cheyenne Fund for use by the Tribe \$7,400,000 in fiscal year 1995, \$9,000,000 in fiscal year 1996, and \$5,100,000 in fiscal year 1997.

**(b) [Tongue River Dam Project.]**—(1) There are authorized to be appropriated to the Northern Cheyenne Fund for use, in accordance with paragraph (2), for the Tongue River Dam Project:

- (A) 700,000 in fiscal year 1993;
- (B) \$700,000 in fiscal year 1994;
- (c) \$15,300,000 in fiscal year 1995;
- (D) \$11,400,000 in fiscal year 1996; and
- (E) \$3,400,000 in fiscal year 1997.

(2) Moneys appropriated pursuant to paragraph (1) shall be available for use by the State of Montana and the Secretary for the planning, design, and construction of the Tongue River Dam Project in accordance with provisions of April 17, 1991, letter of agreement signed by the Northern Cheyenne Tribal Federal Negotiation Team and Montana Department of Natural Resources and Conservation. The Federal contribution is provided for development of additional capacity in the Tongue River Dam for storage of water secured to the Tribe in satisfaction of the Tribe's claims to water under the Compact.

**(c) [Indexing of authorization for construction costs.]**—For the purposes of this section, the total estimated costs of construction of the Tongue River Dam Project, inclusive of noncontract costs, shall be \$52,200,000 at the January 1991

September 30, 1992

NORTHERN CHEYENNE INDIAN RESERVED WATER 3751

price level. The project's annual authorization provided in subsection (b) and the Federal and State shares shall be adjusted up or down as may be required by reason of ordinary fluctuations in construction costs, as indicated by engineering cost indices applicable to the type of construction involved in the Tongue River Dam Project.

**(d) [Fish and wildlife enhancement.]—(1) [Federal Water Project Recreation Act.]**—The Secretary shall identify and develop features of the Tongue River Dam Project that provide for the enhancement of fish and wildlife habitats, in accordance with the Federal Water Project Recreation Act. (16 U.S.C. § 4601-12 et seq.).

EXPLANATORY NOTE

**Reference in the Text.** The Federal Water Project Recreation Act, Act of July 9, 1965 (Public Law 98-72, 79 Stat. 213; 16 U.S.C. § 4601-12 et seq.) referenced above appears in Volume III at page 1820. Amendments and annotations appear in Volume IV at page 2838 in Supplement I at page S389, and Supplement II at page S921.

**(2) [Authorization of appropriations.]**—There are authorized to be appropriated to the Northern Cheyenne Fund, for expenditure by the Secretary, \$1,800,000 in fiscal year 1996, and \$1,700,000 in fiscal year 1997 for Fish and Wildlife Enhancement, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering costs indices after January 1991. The Tribe shall not be required to reimburse amounts expended pursuant to this section.

**(e) [Environmental compliance.]**—There are authorized to be appropriated to the Northern Cheyenne Fund for fiscal year 1993, and each fiscal year thereafter, such sums as are necessary to carry out all necessary environmental compliance associated with the Compact, including mitigation measures adopted by the Secretary.

**(f) [Environmental costs.]**—All costs associated with the Tongue River Dam Project for environmental compliance mandated by Federal law and fish and wildlife mitigation measures adopted by the Secretary are the sole responsibility of the United States. Funds for such compliance shall be appropriated pursuant to the authorization in subsection (e), and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act. The Secretary is authorized to expend not to exceed \$625,000 of funds appropriated pursuant to subsection (e) for fish and wildlife mitigation costs associated with Tongue River Dam construction authorized by the Act, and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act.

**(g) [Reimbursement to State of Montana.]**—The Secretary shall reimburse Montana for expenditures for environmental compliance activities, conducted on behalf of the United States prior to enactment of this subsection (g), which the Secretary determines to have been properly conducted and necessary for

September 30, 1992

3752 NORTHERN CHEYENNE INDIAN RESERVED WATER

completion of the Tongue River Dam Project. Subsequent to enactment of this subsection (g), the Secretary may not reimburse Montana for any such environmental compliance activities undertaken without the Secretary's prior approval.

**(h) [Operation, maintenance, and replacement costs.]**—There are authorized to be appropriated to the Northern Cheyenne Fund, for fiscal year 1993, and each fiscal year thereafter, on a nonreimbursable basis, such sums as are necessary to pay the annual operation, maintenance, and replacement costs provided for in section 10(f).

**(i) [Without fiscal year definitions.]**—All moneys appropriated pursuant to authorizations under this Act shall be available without fiscal year limitation. (106 Stat. 1189; Act of May 31, 1994, 108 Stat. 707)

EXPLANATORY NOTE

**1994 Amendment.** Section 1(a) of the Act of May 31, 1994 (Public Law 103-263, 108 Stat. 707) provided new subsections 7(f) and 7(g) as they appear above and redesignated the succeeding subsections accordingly. The 1994 Act appears in Volume V at page 4009.

**Sec. 8. [State contributions to settlement.]**—The provisions of section 6(d) shall be subject to the State of Montana contributing the following amounts to the settlement:

- (1) \$5,000,000 for contract costs associated with repair of the Tongue River Dam Project;
- (2) \$11,500,000 to be contributed to the Northern Cheyenne Fund as repayment of the loan provided for in section 6(d);
- (3) \$4,200,000 of noncontract costs assumed by the State of Montana according to the terms of the letter of agreement on cost-sharing between the State of Montana and the United States dated April 17, 1991; and
- (4) \$1,100,000 for the Fish and Wildlife enhancement measures identified in section 7(d).

**Sec. 9. [Big Horn Reservoir storage.]—(a) [Allocation for Tribe.]—(1) [In general.]**—As provided in the Compact, the Secretary shall allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Basin Program, Montana, measured at the outlet works of the dam or at the diversion point from the Reservoir, for use or disposition by the Tribe for any purpose.

**(2) [Prior reserved rights.]**—This allocation shall be subject to the prior reserved water rights, if any, of any Indian tribe, or of persons claiming water through that tribe, to the water allocated in paragraph (1).

**(b) [Payments by Tribe.]—(1) [In general.]**—The Tribe shall not be required to make payments to the United States for the portion of the tribal water right stored in or used from the Big Horn Reservoir except for each acre-foot of

September 30, 1992

NORTHERN CHEYENNE INDIAN RESERVED WATER 3753

stored water used or sold for municipal or industrial purposes. The Tribe shall pay annually to the United States an amount to cover the proportionate share of the—

(A) annual operation, maintenance and replacement costs for the Yellowtail Unit allocable to the amount of water for municipal and industrial purposes used or sold by the Tribe; and

(B) capital costs with appropriate interest for the Yellowtail Unit allocable to the amount of water for municipal and industrial purposes used or sold by the Tribe.

**(2) [Adjustment of payments.]**—The annual payments shall be reviewed and adjusted, as appropriate, to reflect the actual operation, maintenance, and replacement costs, and the actual capital costs, for the Yellowtail Unit.

**(c) [Use and sale of water.]—(1) [In general.]**—Except for payments required to be made to the United States pursuant to subsection (b), the Tribe shall—

(A) set such rates as it considers proper for its use or sale of stored water; and

(B) retain all revenues from its use or sale of the stored water.

**(2) [Hydropower generation.]**—The United States shall retain the right to use any and all water stored in the Big Horn Reservoir for hydropower generation.

**(d) [Agreement with Tribe.]**—The Secretary shall enter into an agreement with the Tribe providing—

(1) for the Tribe's use or sale of water stored in the Big Horn Reservoir subject to the terms and conditions of the Compact; and

(2) for the collection and disposition of revenues in connection with water stored in the Big Horn Reservoir that is made available to the Tribe.

**(e) [Moratorium on water marketing.]**—Notwithstanding any provision of this Act or the Compact, no portion of the allocation described in paragraph (1) of subsection (a) shall be sold or leased by the Tribe for a period of 10 years following the date on which the Compact becomes effective pursuant to Article V(A)(1) of the Compact or for a period of 10 years following any earlier date on which the allocation may become available to the Tribe, unless the Crow Tribe and the Northern Cheyenne Tribe agree otherwise.

**(f) [Limitation on water marketing.]**—The Secretary may enter into contracts for the sale or lease of water to which the United States holds legal title and which is stored in the Big Horn Reservoir, except that with respect to any such contract—

(1) the Secretary provides notice to the Northern Cheyenne Tribe and the Crow Tribe of his intent to enter into a contract at least 120 days in advance of entering into such contract;

(2) the terms of the contract for sale or lease of water provide that the contract will not exceed a 2-year term, with a right of renewal following a 120-day notice period to the Northern Cheyenne Tribe and Crow Tribe; and

September 30, 1992

3754 NORTHERN CHEYENNE INDIAN RESERVED WATER

(3) the terms of the contract for sale or lease of water contain a provision that makes clear that the contract is subject to alteration or termination by the United States pending the resolution of claims to water by the Crow Tribe. (106 Stat. 1190)

**Sec. 10. [Tongue River Dam Project.]—(a) [Cooperative agreements.]**—The Secretary shall enter into a cooperative agreement with the State of Montana for the planning, design, and construction of the Tongue River Dam Project in accordance with the provisions of the April 17, 1991, letter of agreement signed by the Northern Cheyenne Tribe Federal Negotiating Team and the Montana Department of Natural Resources and Conservation. The Secretary shall also enter into a cooperative agreement with the State of Montana for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) on the Tongue River Dam Project.

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.) referenced above appears in Volume IV at page 2492.

**(b) [Ownership.]**—Notwithstanding Federal participation in the Tongue River Dam Project, the Tongue River Dam shall remain in the ownership of the State of Montana.

**(c) [State operation of reservoir.]**—Except as otherwise provided in the Compact, nothing in this Act shall affect the State's operation of the Tongue River Reservoir to fulfill State water contracts.

**(d) [Contracts—Reclamation Reform Act.]**—Nothing in this Act is intended to subject holders of State water contracts from the Tongue River Reservoir who do not have a contract for Federal reclamation storage to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. § 390aa et seq.).

EXPLANATORY NOTE

**Reference in the Text.** The Reclamation Reform Act of 1982, Act of October 12, 1982 (Public Law 97-293, 96 Stat. 1263; 43 U.S.C. 390aa et seq.) referenced above appears in Volume IV at page 3334 and as subsequently amended in Supplement II at page S1092.

**(e) [Land transfer.]**—(1) Notwithstanding any other provisions of law, the Bureau of Land Management shall transfer to the Bureau of Indian Affairs in trust for the Northern Cheyenne Tribe the following described land:

- T. 8 S., R. 40 E., P.M.M.
- Sec. 26, N1/2SW1/4
- Sec. 27, N 1/2SE 1/4
- T. 8 S., R. 40 E., P.M.M.

September 30, 1992

NORTHERN CHEYENNE INDIAN RESERVED WATER 3755

Sec. 23, SW1/4NE1/4, N1/2SE1/4

Sec. 24, NW1/4SW1/4.

(2) Nothing in this section is intended to address the jurisdiction of the Tribe or the State of Montana over the property being transferred.

(3) This transfer shall not be construed as creating a Federal reserved water right.

**(f) [Payment of the Tribe's share.]**—The Secretary, acting through the Bureau of Indian Affairs, shall continue to pay annually to the State of Montana on a nonreimbursable basis an amount to cover the proportionate share of the annual operation, maintenance and replacement costs for the Tongue River Dam allocable to the Tribe's stored water in the reservoir.

**(g) [Employment preference.]**—Notwithstanding any other provision of law, the State shall require in all contracts and subcontracts relating to construction of the Tongue River Dam Project, a provision that the contractor and its subcontractors shall provide a hiring preference to Northern Cheyenne tribal members. The State and the Tribe shall enter into an agreement setting forth the manner in which the preference will be implemented and enforced. (106 Stat. 1191)

**Sec. 11. [Miscellaneous provisions.]—(a) [Waiver of sovereign immunity.]**—Notwithstanding the provisions of Article IV, Section G. of the Compact, the United States shall not be deemed to have waived its immunity from suit except to the extent provided in subsections (a), (b), and (c) of section 208 of the Act of July 10, 1952 (43 U.S.C. § 666).

EXPLANATORY NOTE

**Reference in the Text.** Section 208 of the U.S.C. § 666.) referenced above appears in Act of July 10, 1952 (ch.651, 66 Stat. 560; 43 Volume II at page 1097.

**(b) [Effect on Yellowstone River Compact.]**—Nothing in this Act shall be construed to alter or amend any provision of the Yellowstone River Compact, as consented to in the Act entitled "An Act granting the consent of Congress to a Compact entered into by the States of Montana, North Dakota, and Wyoming relating to the waters of the Yellowstone River", approved October 30, 1951 (65 Stat. 663).

**(c) [Effect on rights of other Tribes.]**—Nothing in this Act is intended to quantify or otherwise adversely affect the land and water rights, or claims or entitlements to land or water, of an Indian Tribe other than the Northern Cheyenne Tribe.

**(d) [Environmental compliance.]**—In implementing the Compact, the Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. § 433- 4335), and the Endangered Species Act (16 U.S.C. §1531 et seq.), and other applicable environmental acts and regulations.

September 30, 1992

3756 NORTHERN CHEYENNE INDIAN RESERVED WATER

EXPLANATORY NOTE

**Reference in the Text.** The Endangered Species Act, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884; 16 U.S.C. § 1531 et seq.) referenced above appears in Volume IV at page 2782.

**(e) [Execution of Compact.]**—Execution of the Compact by the Secretary as provided for in section 4 shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. § 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance during the implementation phase of this settlement.

**(f) [Bureau of Reclamation designated as the lead agency.]**—With respect to the Tongue River Dam Project and uses of the Tribe's Big Horn Reservoir storage allocation, the Bureau of Reclamation is designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

**(g) [Bureau of Indian Affairs designated as the lead agency.]**—With respect to all other provisions of the Compact, the Bureau of Indian Affairs is designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws. (106 Stat. 1192)

**Sec. 12. [Application of provisions regarding allocation of water resources.]—(a) [Finding.]**—Congress finds that the allocation of water resources to the Tribe under this Act is uniquely suited to the geographic, social, and economic characteristics of the area and situation involved.

**(b) [Application.]**—The provisions of this Act regarding the allocation of water resources to the Tribe shall not be construed to be applied to nor be precedent for any other Indian water right claims. (106 Stat. 1193)

**Sec. 13. [Effective date of settlement.]**—The settlement contained in this Act shall not become effective if a tribal referendum on the settlement is requested pursuant to the Northern Cheyenne Constitution within 60 days following the date of enactment of this Act, and the settlement fails to be approved in such referendum held within 120 days following the date of enactment of this Act. If the settlement does not become effective pursuant to this section, the United States (including the Secretary and all other officers), the State of Montana, and the Tribe are relieved of all rights, entitlements, duties, responsibilities and authorities conferred, imposed or created by this Act. If a referendum is not requested within such 60-day period, the settlement shall take effect upon the date next following the expiration of such 60-day period. If a referendum is requested within such 60-day period, and the settlement is approved in a

September 30, 1992

NORTHERN CHEYENNE INDIAN RESERVED WATER 3757

referendum held within 120 days following the date of enactment of this Act, the settlement shall take effect on the date next following the date of such approval. (106 Stat. 1194)

EXPLANATORY NOTES

**Not Codified.** This Act is not codified in the U.S. Code. S. Rept. No. 102-347. Passed Senate August 7, 1992. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 102-894. Passed House Sept. 22, 1992.

**Legislative History.** S. 1607, Public Law 102-374 in the 102d Congress. Reported in Senate from Select Comm. on Indian Affairs;

October 2, 1992

3758

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT OF 1993**

[Extracts from] an Act making appropriations for energy and water development for the fiscal year ending September 30, 1993, and for other purposes. (Act of October 2, 1992, Public Law 102-377, 106 Stat. 1315)

\* \* \* \* \*

**GENERAL PROVISIONS  
DEPARTMENT OF THE INTERIOR**

\* \* \* \* \*

**Sec. 206. [Federal Water Project Recreation Act amended.]**—Subsection (a) of section 7 of the Federal Water Project Recreation Act (79 Stat. 216 16; U.S.C. 4601-18) is amended by deleting the Proviso from the first sentence and by changing the colon after the word "purposes" to a period.

EXPLANATORY NOTE

**Reference in the Text.** The Federal Water Project Recreation Act (79 Stat. 216; 16 U.S.C. 4601-18) referenced above appears in Volume III at page 1820. Amendments and annotations appear at pages 2838 in Volume IV, S389-S395 in Supplement I and in Supplement II at page S921.

**Sec. 207. [Sykeston Canal-National Environmental Policy Act compliance required.]**—Utilizing processes required under the National Environmental Policy Act, the Secretary of the Interior is directed to conduct a formal analysis, by no later than March 31, 1994, of alternatives for the design, construction, and operation of the Sykeston Canal as a functional replacement for Lonetree Reservoir, pursuant to section 8(a)(1) of Public Law 89-108, as amended by the Garrison Diversion Reformulation Act of 1986, Public Law 99-294. The resulting Definite Plan Report/Environmental Impact Statement shall be utilized by the Secretary for the development of a Record of Decision which is to contain the Secretary's recommendation for proceeding with the final design and construction of the Sykeston Canal, consistent with the provisions of the Garrison Diversion Reformulation Act, the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, and the Boundary Waters Treaty of 1909. For purposes of this section, the Secretary shall take into account the results of studies

October 2, 1992

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS 3759

conducted by the Secretary of the Army with respect to the stabilization of Devils Lake, North Dakota. (106 Stat. 1332)

EXPLANATORY NOTE

**References in the Text.** The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) referenced above appears in Volume III at page 1841. Amendments and annotations appear in Supplement II at page S933.

The Garrison Diversion Reformulation Act of 1986, Act of May 12, 1986 (Public Law 99-294, 100 Stat. 418) appears in Volume V at page 3464.

The National Environmental Policy Act of 1969 appears in Volume IV at page 2492.

The Endangered Species Act appears in Volume IV at page 2782.

The Boundary Waters Treaty of 1909 appears in Volume I at page 129.

\* \* \* \* \*

This Act may be cited as the "Energy and Water Development Appropriations Act, 1993."

EXPLANATORY NOTES

**Not Codified.** The extracts of this Act reprinted here are not codified in the U.S. Code.

**Legislative History.** H.R. 5373, Public Law 102-377 in the 102nd Congress. Reported in the House from Appropriations; H.R. Repts. Nos. 102-555 and 102-866 (Conference). Reported in the Senate from Appropriations; S. Rept. 102-344; Passed the House June 17, 1992.

Considered and passed Senate, amended, July 31, August 3, 1992. House agreed to conference report, concurred in certain amendments, in others with amendments September 17, 1992. House receded and concurred in certain Senate amendment with an amendment. Senate agreed to conference report; concurred in House amendments September 24, 1992.

October 23, 1992

3760

## **JICARILLA APACHE TRIBE WATER RIGHTS SETTLEMENT ACT**

An Act relating to the settlement of the water rights claims of the Jicarilla Apache Tribe. (Act of October 23, 1992, Public Law 102-441, 106 Stat. 2237)

**Section 1. [Short Title.]**—This Act may be cited as the "Jicarilla Apache Tribe Water Rights Settlement Act." (106 Stat. 2237)

**Sec. 2. [Findings.]**—Congress hereby finds and declares that—

(1) the Jicarilla Apache Tribe has multiple claims against the State of New Mexico, the United States, and other parties, related to water rights for its reservation in northern New Mexico and based on the alleged infringement of those rights;

(2) Federal water resource projects have diverted water upstream from the Jicarilla Apache Indian Reservation and have impounded water downstream from the reservation, but no provision has been made for substantial water resource development to benefit the reservation;

(3) a full and final settlement of the water rights claims of the Jicarilla Apache Tribe will inure to the benefit of the Tribe, the State of New Mexico, and the United States;

(4) this Act, together with a Settlement Contract between the Jicarilla Apache Tribe and the United States, is intended to provide for the full, fair and final resolution of the water right claims of the Tribe, and to secure to the Tribe a perpetual water supply for use on its reservation;

(5) the Jicarilla Apache Tribe may use this water supply outside the boundaries of its reservation consistent with the terms of a Settlement Contract between the Tribe and the United States; and

(6) the Secretary, in accordance with the requirements of section 11(a) of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water to fulfill the Settlement Contract is reasonably likely to be available for use in the State of New Mexico under the allocations made in articles III and XIV of the Upper Colorado River Basin Compact and has transmitted such determination to Congress by letter dated February 2, 1989.

### EXPLANATORY NOTE

**Reference in the Text.** The Act of June 13, 1962 (Public Law 87-483, 76 Stat. 96, 99) referenced above and in Sec. 4. below appears in Volume III at page 1658.

October 23, 1992

JICARILLA APACHE WATER RIGHTS SETTLEMENT 3761

**Sec. 3. [Purpose.]**—It is the purpose of this Act to—

(1) approve, ratify and incorporate by reference the Settlement Contract; and

(2) to authorize the actions and appropriations necessary and appropriate for the United States to fulfill its obligations under such contract and this Act.

**Sec. 4. [Definitions.]**—As used in this Act: (1) The term "Settlement Contract" means a contract between the United States and the Jicarilla Apache Tribe setting forth the commitments, rights, and obligations of the United States and the Tribe in providing for the resolution of all water right claims of the Tribe.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Tribe" means the Jicarilla Apache Tribe of Indians organized under a revised constitution adopted December 15, 1968, pursuant to the Indian Reorganization Act (25 U.S.C. § 476 et seq.) and duly recognized by the United States of America.

(4) The term "Navajo Reservoir" means the reservoir created by the impoundment of the San Juan River at the Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105).

(5) The term "San Juan-Chama Project" means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97), and the Act of April 11, 1956 (70 Stat. 105). (106 Stat. 2238)

EXPLANATORY NOTE

**References in the Text.** The Indian Reorganization Act (25 U.S.C. 476 et seq.) 105) referenced above appears in Volume II at page 1248. Annotations and amendments of the 1956 Act appear in Supplement I at page S247 and Supplement II at page S873. referenced above does not appear herein.

**Sec. 5. [Settlement Contract approval.]—(a) [Settlement Contract.]**—The Secretary, acting on behalf of the United States, and the President of the Tribe, acting pursuant to an authorization from the Jicarilla Apache Tribal Council, are authorized to enter into the Settlement Contract, but in no event shall such contract be limited by any term of years, or be canceled, terminated or rescinded by the action of any party, except by an Act of Congress hereafter enacted.

**(b) [Approval of Settlement Contract.]**—The Congress approves, ratifies, and hereby incorporates by reference the Settlement Contract.

**(c) [Authority of Secretary.]**—The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Contract and this Act. (106 Stat. 2238)

3762 JICARILLA APACHE WATER RIGHTS SETTLEMENT

**Sec. 6. [Water available under the contract.]—(a) [Water available.]**—Water made available annually under the Settlement Contract approved by section 5 of this Act is in the following amounts under water rights held by the Secretary for the following projects or sources:

	Total diversion (acre- <u>feet/year</u> )	Total depletion (acre- <u>feet/ year</u> )
Navajo Reservoir or Navajo River	33,500	25,500
San Juan-Chama Project	<u>6,500</u>	<u>6,500</u>
Total	40,000	32,000

**(b) [Amendments to contract.]**—The Secretary may enter into amendments to the Settlement Contract which would in his judgment be in the interest of water conservation and in the spirit of this settlement of the claims of the Tribe, but the water depletions shall not exceed the amounts set forth in this section.

**(c) [Rights of the Tribe.]**—The Tribe will be entitled under the Settlement Contract to use any and all return flows attributable to uses of the water by the Tribe or its contractors, as long as the water depletions do not exceed the amounts set forth in this section.

**Sec. 7. [Subcontracts.]—(a) [Authority of Tribe.]**—When water made available under the Settlement Contract approved by section 5 of this Act is not being used by the Tribe, the Tribe may subcontract with third parties, subject to the approval of the Secretary in accordance with this section, to supply water for beneficial use outside of the reservation, subject to and not inconsistent with the same requirements and conditions of State law, any applicable Federal law, interstate compact, and international law as apply to the exercise of water rights held by non-Federal, non-Indian entities. Nothing in this Act shall be construed to establish, address, prejudice, or prevent any party from litigating, whether or to what extent any of the aforementioned laws do or do not permit, govern, or apply to the use of the Tribe's water outside the State.

**(b) [Maximum term.]**—The Tribe shall not permanently alienate any rights it has under the Settlement Contract. The maximum term of any water use subcontract, including all renewals, shall not exceed 99 years in duration.

**(c) [Approval of Secretary.]**—(1) The Secretary shall approve or disapprove any subcontracts submitted to him for approval within—

(A) 180 days after submission; or

(B) 60 days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)), or any other requirement of Federal law, whichever is later.

(2) Any party to a subcontract may enforce the provision of this subsection pursuant to section 1361 of title 28, United States Code.

October 23, 1992

JICARILLA APACHE WATER RIGHTS SETTLEMENT 3763

**(d) [Preemption.]**—The authorization provided for in subsection (a) and the approval authority of the Secretary provided for in subsection (c) shall not amend, construe, supersede, or preempt any Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters. The provisions of section 2116 of the Revised Statutes (25 U.S.C. § 177) shall not apply to any water made available under the Settlement Contract.

**(e) [Forfeiture.]**—The nonuse of the water supply secured herein by a subcontractor of the Tribe shall in no event result in a forfeiture, abandonment, relinquishment, or other loss of all or any part of the rights exercised by the Tribe under the Settlement Contract. (106 Stat. 2239)

EXPLANATORY NOTE

**References 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. § 4332(2)(C)) referenced above appears in Volume IV at page 2492. Section 2116 of the Revised Statutes (25 U.S.C. § 177) referenced above does not appear herein.

**Sec. 8. [Trust fund; authorization of appropriations.]—(a) [Establishment of trust fund.]**—There is hereby established in the Treasury a fund to be known as the Jicarilla Apache Water Resources Development Trust Fund (hereafter in this section referred to as the "Fund").

**(b) [Authorization.]**—There are authorized to be appropriated:

(1) \$6,000,000 for deposit, in accordance with the following schedule, in the Fund, to be expended by the Tribe for any water resource development costs, including costs associated with this settlement:

(A) \$2,000,000 shall be deposited in the first fiscal year which commences following the date of the enactment of this Act;

(B) \$2,000,000 during the fiscal year next following the first fiscal year referred to in subparagraph (A); and

(C) \$2,000,000 during the fiscal year next following the second fiscal year referred to in subparagraph (B); and

(2) such amounts as are necessary, for expenditures by the Secretary, to pay the Tribe's share of the operation, maintenance, and replacement costs for the San Juan-Chama Project, when the Secretary has waived the Tribe's obligation to pay such costs pursuant to subsection (c)(1) and section 10(f) of the Settlement Contract.

**(c) [No per capita payments.]**—No part of the principal of the fund, or of the income accruing to such fund, or the revenue from any water use subcontract, shall be distributed to any member of the Tribe on a per capita basis.

**(d) [Waivers.]**—Notwithstanding the provisions of the Act of August 4, 1939 (53 Stat. 1187), or any other provision of law:

October 23, 1992

3764 JICARILLA APACHE WATER RIGHTS SETTLEMENT

(1) When the conditions specified in section 10(f) of the Settlement Contract are satisfied, the Secretary may waive all or part of the Tribe's share of the construction costs, and the operation, maintenance, and replacement costs for the Navajo Reservoir and the San Juan-Chama Project.

(2) When all or part of the Tribe's share of the construction costs for the San Juan-Chama Project are waived by the Secretary, that portion of those costs waived shall be nonreimbursable.

(3) The Tribe's share of the construction cost obligation for the San Juan-Chama Project, both principal and interest, due from 1972 to the execution of the Settlement Contract shall be nonreimbursable.

**(e) [Dismissal of claims.]**—(1) Amounts authorized to be appropriated to the Fund under subsection (b)(1) may not be expended until the following conditions are met:

(A) The following actions brought by the Tribe against the United States have been dismissed:

(i) Jicarilla Apache Tribe against United States, et al., Civil No. 82-1327 JP (D.N.M.).

(ii) Claims 3 and 4 in Jicarilla Apache Tribe against United States, No. 112-77 (U.S. Claims Ct.).

(B) Partial final decrees which would quantify the Tribe's reserved water right claims have been entered in the following general stream adjudications:

(i) New Mexico against United States, et al., No. 75 184 (11th Jud. Dist., San Juan County, New Mexico), involving claims to the waters of the San Juan River and its tributaries.

(ii) New Mexico against Aragon, et al., Civil No. 79 41 SC (D.N.M.), involving claims to the Rio Chama and its tributaries.

(2) Within a reasonable time after the date of the enactment of this Act and the execution of the Settlement Contract pursuant to section 5(a), the United States, the Tribe, and the State of New Mexico shall file joint motions in the general stream adjudications specified in paragraph (1)(B) for the entry of partial final decrees, agreed to by the United States, the Tribe, and the State of New Mexico on July 9, 1992, to quantify the Tribe's reserved water right claims consistent with the Settlement Contract, subject to amendments.

(3) If the two partial final decrees specified in paragraph (1)(B) are not entered by December 31, 1996, the Fund shall be terminated, and amounts contributed to the Fund by the United States, shall be deposited in the general fund of the Treasury. (106 Stat. 2241)

**Sec. 9. [Environmental compliance.]**—Execution of the Settlement Contract shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.). The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969, the Endangered

October 23, 1992

JICARILLA APACHE WATER RIGHTS SETTLEMENT 3765

Species Act, and other applicable environmental laws and regulations in fulfilling the terms of the Settlement Contract.

EXPLANATORY NOTE

**References 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. § 4332(2)(C)) referenced above appears in Volume IV at page 2492. Section 2116 of the Revised Statutes (25 U.S.C. § 177) referenced above does not appear herein.

**Sec. 10. [Protection of rights.]**—The tribal rights under the Settlement Contract approved by section 5 of this Act, and the water rights adjudicated by final decrees in general stream adjudications consistent with such contract, shall inure to the benefit of the Tribe, and the Tribe shall not be denied all or any part of such rights absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted.

**Sec. 11. [Disclaimer.]—(a) [In general.]**—Nothing in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774); the Colorado River Storage Project Act (70 Stat. 105); the Colorado River Basin Project Act (82 Stat. 885); the Act of June 13, 1962 (76 Stat. 96); the Colorado River Compact of 1922 made effective by Public Proclamation of the President of the United States on June 25, 1929 (46 Stat. 3000); the Upper Colorado River Basin Compact (63 Stat. 31); the Rio Grande Compact (53 Stat. 785); or the Treaty between the United States of America and the United Mexican States (59 Stat. 1219). (106 Stat. 2241)

**(b) [Relative to other Tribes.]**—Nothing in the Settlement Contract or this Act shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of the Navajo Nation, or any Indian tribe, pueblo, or community, other than the Jicarilla Apache Tribe. (106 Stat. 2242)

EXPLANATORY NOTES

**Not codified.** This Act is not codified in the U.S. Code. House from Interior and Insular Affairs; H.R. Rept. No. 102-955. Passed the House

**Legislative History.** H.R. 5122, Public Law 102-441 in the 102<sup>nd</sup> Congress. Reported in September 29, 1992. Passed the Senate October 7, 1992.

**ENERGY POLICY ACT OF 1992**

[Extracts from] An Act to provide for improved energy efficiency. (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776)

**Section 1. [Short title-Table of contents.]-**(a) [Short title.]— This Act may be cited as the "Energy Policy Act of 1992". (42 U.S.C. § 13201 note.)

**(b) [Table of contents.]—**

TITLE I-ENERGY EFFICIENCY

\* \* \* \* \*

**Subtitle B-Utilities**

Sec. 111. Encouragement of investments in conservation and energy efficiency by electric utilities.  
Sec. 112. Energy efficiency grants to state regulatory authorities.

\* \* \* \* \*

Sec. 114. Amendment of Hoover Power Plant Act.

\* \* \* \* \*

TITLE VII-ELECTRICITY

\* \* \* \* \*

**Subtitle B-Federal Power Act; Interstate Commerce in Electricity**

Sec. 721. Amendments to section 211 of Federal Power Act.  
Sec. 722. Transmission services.  
Sec. 723. Information requirements.  
Sec. 724. Sales by exempt wholesale generators.  
Sec. 725. Penalties.  
Sec. 726. Definitions.

**Subtitle C-State and Local Authorities**

Sec. 731. State authorities.

\* \* \* \* \*

TITLE XVII-ADDITIONAL FEDERAL POWER ACT PROVISIONS

October 24, 1992

ENERGY POLICY ACT OF 1992

3767

Sec. 1701. Additional Federal Power Act provisions.

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TITLE XXIV-NON-FEDERAL POWER ACT  
HYDROPOWER PROVISIONS

- Sec. 2401. Rights-of-way on certain Federal lands.
- Sec. 2402. Dam in national park system units.
- Sec. 2403. Third party contracting by FERC.
- Sec. 2404. Improvement at existing Federal facilities.
- Sec. 2405. Water conservation and energy production.
- Sec. 2406. Federal projects in the Pacific Northwest.
- Sec. 2407. Certain projects in Alaska.
- Sec. 2408. Projects on fresh waters in State of Hawaii.
- Sec. 2409. Evaluation of development potential.

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TITLE XXVI-INDIAN ENERGY RESOURCES

- Sec. 2601. Definitions.
- Sec. 2602. Tribal consultation.
- Sec. 2603. Promoting energy resource development and energy vertical integration on Indian reservations.
- Sec. 2604. Indian energy resource regulation.
- Sec. 2605. Indian Energy Resource Commission.
- Sec. 2606. Tribal government energy assistance program.

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TITLE I-ENERGY EFFICIENCY

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**Subtitle B-Utilities**

**Sec. 111. [Encouragement of divestments in conservation and energy efficiency by electric utilities.]-**(a) **[Amendment to the Public Utility Regulatory Policies Act.]**-The Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 92 Stat. 3117; 16 U.S.C. § 2601 and following) is amended by adding the following at the end of section 111(d)(16 U.S.C. § 2621.):

"(7) [Integrated resource planning.]-Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory

authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

"(8) [Investments in conservation and demand management.]—The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated. (106 Stat. 2795)

"(9) [Energy efficiency investments in power generation and supply.]—The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment."

**(b) [Protection for small business.]**—The Public Utility Regulatory Policies Act of 1978 (Public Law 95-617; 92 Stat. 3117; 16 U.S.C. § 2601 and following) is amended by inserting the following new paragraph at the end of subsection 111(c):

"(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall—

"(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

"(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses."

**(c) [Effective date.]**—Section 112(b) of such Act is amended by inserting "(or after the enactment of the Comprehensive National Energy Policy Act in the

October 24, 1992

ENERGY POLICY ACT OF 1992

3769

case of standards under paragraphs (7), (8), and (9) of section 111(d))" after "Act" in both places such word appears in paragraphs (1) and (2). (16 U.S.C. § 2622.)

**(d) [Definitions.]**—Section 3 of such Act (16 U.S.C. § 2602.) is amended by adding the following paragraphs at the end thereof:

"(19) The term 'integrated resource planning' means, in the case of an electric utility, a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

"(20) The term 'system cost' means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance.

"(21) The term 'demand side management' includes load management techniques.". (106 Stat. 2795)

**(e) [Report.]**—Not later than 2 years after the date of the enactment of this Act, the Secretary shall transmit a report to the President and to the Congress containing—

(1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978;

(2) an evaluation by the Secretary of whether and to what extent, integrated resource planning is likely to result in—

(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

(B) enhanced or reduced reliability of electric service; and

(C) increased or decreased dependence on particular energy resources; and

(3) a survey of practices and policies under which electric cooperatives prepare integrated resource plans, submit such plans to the Rural Electrification Administration and the extent to which such integrated resource planning is reflected in rates charged to customers. (16 U.S.C. § 2621 note.)

The report shall include an analysis prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by utilities on small businesses engaged in the design, sale, supply, installation,

October 24, 1992

3770

ENERGY POLICY ACT OF 1992

or servicing of similar energy conservation, energy efficiency, or other demand side management measures and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs. (106 Stat. 2795)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617; 92 Stat. 3117; 16 U.S.C. § 2601 referenced) above appear in Volume IV at page 3137. Amendments and annotations of the 1978 Act appear in Supplement II at page S1071.

- Sec. 112. [Energy efficiency grants to state regulatory authorities.]—**
- (a) [Energy efficiency grants.]—**The Secretary is authorized in accordance with the provisions of this section to provide grants to State regulatory authorities in an amount not to exceed \$250,000 per authority, for purposes of encouraging demand-side management including energy conservation, energy efficiency and load management techniques and for meeting the requirements of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978 and as a means of meeting gas supply needs and to meet the requirements of paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978. Such grants may be utilized by a State regulatory authority to provide financial assistance to nonprofit subgrantees of the Department of Energy's Weatherization Assistance Program in order to facilitate participation by such subgrantees in proceedings of such regulatory authority to examine energy conservation, energy efficiency, or other demand-side management programs. (42 U.S.C. § 6807a.)
- (b) [Plan.]—**A State regulatory authority wishing to receive a grant under this section shall submit a plan to the Secretary that specifies the actions such authority proposes to take that would achieve the purposes of this section.
- (c) [Secretarial action.]—**(1) In determining whether, and in what amount, to provide a grant to a State regulatory authority under this section the Secretary shall consider, in addition to other appropriate factors, the actions proposed by the State regulatory authority to achieve the purposes of this section and to consider implementation of the ratemaking standards established in—
- (A) paragraphs (7), (8) and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978; or
  - (B) paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978.
- (2) Such actions—
- (A) shall include procedures to facilitate the participation of grantees and nonprofit subgrantees of the Department of Energy's Weatherization

October 24, 1992

ENERGY POLICY ACT OF 1992

3771

Assistance Program in proceedings of such regulatory authorities examining demand-side management program; and

(B) shall provide for coverage of the cost of such grantee and subgrantees' participation in such proceedings.

**(d) [Recordkeeping.]**—Each State regulatory authority that receives a grant under this section shall keep such records as the Secretary shall require.

**(e) [Definition.]**—For purposes of this section, the term "State regulatory authority" shall have the same meaning as provided by section 3 of the Public Utility Regulatory Policies Act of 1978 in the case of electric utilities, and such term shall have the same as provided by section 302 of the Public Utility Regulatory Policies Act of 1978 in the case of gas utilities, except that in the case of any State without a statewide ratemaking such term shall mean the State energy office.

**(f) [Authorization.]**—There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1994, 1995 and 1996 to carry out the purposes of this section. (106 Stat. 2797)

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**Sec. 114. [Amendment of Hoover Power Plant Act.]**—Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. § 7275-7276, Public Law 98-381) is amended to read as follows:

EXPLANATORY NOTE

**Reference in the Text.** The Hoover Power Plant Act of 1984, Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1333; 42 U.S.C. § 7275-7276.) referenced above appears in Volume V at page 3403.

"Title II—INTEGRATED RESOURCE PLANNING

"Sec. 201. Definitions.

"Sec. 202. Regulations to require integrated resource planning.

"Sec. 203. Technical assistance.

"Sec. 204. Integrated resource plans.

"Sec. 205. Miscellaneous provisions.

"Sec. 201. [Definitions.]—"As used in this title:

"(1) The term 'Administrator' means the Administrator of the Western Area Power Administration. (106 Stat. 2799)

"(2) The term 'integrated resource planning' means a plan process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable

energy resources, in order to provide adequate and reliable service to its customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

"(3) The term 'least cost option' means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

"(4) The term 'long-term firm power service contract' means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

"(5) The terms 'customer' or 'customers' means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long term firm power service contract. Such terms include parent type entities and their distribution or user members.

"(6) For any customer, the term 'applicable integrated resource plan' means the integrated resource plan approved by the Administrator under this title for that customer. (42 U.S.C. § 7275.)

"Sec. 202. [Regulations to require integrated resource planning.]—

"(a) [Regulations.]—Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1986 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after the enactment of this section, integrated resource planning in accordance with the requirements of this title.

"(b) [Certain small customers.]—Notwithstanding subsection (a), for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects. (106 Stat. 2800, 42 U.S.C. § 7276.)

October 24, 1992

ENERGY POLICY ACT OF 1992

3773

"Sec. 203. [Technical assistance.]—"The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning. (42 U.S.C. § 7276a.)

"Sec. 204. [Integrated resource plans.]—"(a) [Review by Western Area Power Administration.]—Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision complied with this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with this title. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of this title the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with this title. (106 Stat. 2799; 42 U.S.C. § 7276b.)

"(b) [Criteria for approval of integrated resource plans.]—The Administrator shall approve an integrated resource plan submitted as required under subsection (a) if, in developing the plan, the customer has:

"(1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.

"(2) Included a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its integrated resource plan.

"(3) Designated 'least-cost options' to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.

"(4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

"(5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

"(6) Included load forecasting.

"(7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

"(8) Met such other criteria as the Administrator shall require.

"(c) [Use of other integrated resource plans.]—Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource planning considered and implemented pursuant to section 111(d) of the Public Utility Regulatory Policies Act of 1978, in evaluating that customer's integrated resource plan under this title, the Administrator shall accept such plan as fulfillment of the requirements of this title to the extent such plan substantially complies with the requirements of this title.

"(d) [Compliance with integrated resource plans.]—Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out-of-compliance, the Administrator shall impose a surcharge under this section on an electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

"(e) [Enforcement.]—(1) [No approved plan.]—If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained

October 24, 1992

ENERGY POLICY ACT OF 1992

3775

by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

"(2) [Failure to comply with approved plan.]—After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan. (106 Stat. 2799)

"(3) [Reduction in power allocation.]—In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

"(f) [Integrated resource planning cooperatives.]—With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

"(g) [Customers with more than 1 contract.]—If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under this title.

"(h) [Program review.]—Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Administrator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in section 204(b) to reflect changes, if any, in technology, needs, or other developments.

"Sec. 205. [Miscellaneous provisions.]—"(a) [Environmental impact statement.]—The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Administrator implementing this title in the same

manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment

"(b) [Annual reports.]—The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under this title and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

"(c) [State regulated investor-owned utilities.]—Any State regulated electric utility (as defined in section 3(18) of the Public Utility Regulatory Policies Act of 1978) shall be exempt from the provisions of this title.

"(d) [Rural electrification administration requirements.]—Nothing in this title shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration". (106 Stat. 2799; 42 U.S.C. § 7276c.)

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TITLE VII—ELECTRICITY

\* \* \* \* \*

**Subtitle B—Federal Power Act; Interstate Commerce in Electricity**

**Sec. 721. [Amendments to section 211 of Federal Power Act.]—**Section 211 of the Federal Power Act (16 U.S.C. 824j) is amended as follows:

(1) The first sentence of subsection (a) is amended to read as follows: "Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant."

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

(3) Amend subsection (b) to read as follows:

"(b) [Reliability of electric service.]—No order may be issued under this section or section 210 if, after giving consideration to consistently applied regional or

October 24, 1992

ENERGY POLICY ACT OF 1992

3777

national reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order."

(4) In subsection (c)–

(A) Strike out paragraph (1).

(B) In paragraph (2) strike "which requires the electric" and insert "which requires the transmitting".

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

(5) In subsection (d)–

(A) In the first sentence of paragraph (1), strike "electric" and insert "transmitting" in each place it appears.

(B) In the second sentence of paragraph (1) before "and each affected electric utility," insert "each affected transmitting utility,".

(C) In paragraph (3), strike "electric" and insert "transmitting".

(D) Strike the period in subparagraph (B) of paragraph (1) and insert ", or" and after subparagraph (B) insert the following new subparagraph:

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

EXPLANATORY NOTE

**Reference in the Text.** Section 211 of the Federal Power Act (Act of August 26, 1935, ch. 687, 49 Stat. 803; 16 U.S.C. 824j) is referenced on pages 283 and 527 in Volume I. The text of section 211 appears in Supplement I at page S102. Amendments and annotations of the 1935 Act appear in Supplement II at page S841.

**Sec. 722. [Transmission services.]**—Section 212 of the Federal Power Act is amended as follows:

(1) Strike subsections (a) and (b) and insert the following:

"(a) [Rates, charges, terms, and conditions for wholesale transmission services.]—An order under section 211 shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services

provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.". [(16 U.S.C. § 824k.)] (2) Subsection (e) is amended to read as follows:

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

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

(3) Add the following new subsections at the end thereof:

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

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

"(1) directly to an ultimate consumer, or

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

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

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

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

October 24, 1992

ENERGY POLICY ACT OF 1992

3779

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

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

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

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

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

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

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

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

"(B) if application is made to the Commission under section 211 for transmission service under terms and conditions different than those offered

by the Administrator, or following the denial of a request for transmission service by the Administrator, and such application is filed within 60 days of the Administrator's final determination and in accordance with Commission procedures, the Commission shall—

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

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

"(3) Notwithstanding those provisions of section 313(b) of this Act (16 U.S.C. § 825.) which designate the court in which review may be obtained, any party to a proceeding concerning transmission service sought to be furnished by the Administrator of the Bonneville Power Administration seeking review of an order issued by the Commission in such proceeding shall obtain a review of such order in the United States Court of Appeals for the Pacific Northwest, as that region is defined by section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839a(14)).

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

"(5) The Commission shall not issue any order under section 210, section 211, this section, or section 213 requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator's ability to provide such transmission service to the Administrator's power and transmission customers in the Pacific Northwest, as that region is defined in section 3(14) of the Pacific Northwest Electric

October 24, 1992

ENERGY POLICY ACT OF 1992

3781

Power Planning and Conservation Act (16 U.S.C. § 839a(14)), as is needed to assure adequate and reliable service to loads in that region.

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

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

"(2) [Definitions.]—For purposes of this subsection—

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

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

EXPLANATORY NOTE

<p><b>References in the Text.</b> Section 210, 211, 212 and 213 of the Federal Power Act (Act of August 26, 1935, ch. 687, 49 Stat. 803; 16 U.S.C. 824k) are either referenced on pages 262, 284, and 527 in Volume I or appear in Supplement I at page S101 ff. The text of the original section 213 does not appear herein. New sections 213 and 214 of the Federal Power</p>	<p>Act appear below in sections 723 and 724 of this Act and among amendments and annotations of the 1935 Act in Supplement II at page S841.</p> <p>The Pacific Northwest Electric Power Planning and Conservation Act of December 5, 1980(Public Law 96-501, 94 Stat. 2697; 16 U.S.C. § 839.) cited above appears in Volume IV at page 3225.</p>
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**Sec. 723. [Information requirements.]—**Part II of the Federal Power Act (16 U.S.C. § 824/) is amended by adding the following new section after section 212:

"Sec. 213. [Information requirements.]—"(a) [Requests for wholesale transmission services.]—Whenever any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale makes a good faith request to a transmitting utility to provide wholesale transmission

services and requests specific rates and charges, and other terms and conditions, unless the transmitting utility agrees to provide such services at rates, charges, terms and conditions acceptable to such person, the transmitting utility shall, within 60 days of its receipt of the request, or other mutually agreed upon period, provide such person with a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.

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

**Sec. 724. [Sales by exempt wholesale generators.]**—Part II of the Federal Power Act (16 U.S.C. § 824m.) is amended by adding the following new section after section 213:

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

**Sec. 725. [Penalties.]—(a) [Existing penalties not applicable to transmission provisions.]**—Sections 315 and 316 of the Federal Power Act are each amended by adding the following at the end thereof:

"(c) This subsection shall not apply in the case of any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.". (16 U.S.C. § 825n, 825o.)

#### EXPLANATORY NOTE

**References in the Text.** Sections 315 and 316 of the Federal Power Act (Act of August 26, 1935, ch. 687, 49 Stat. 803; 16 U.S.C. 825o) referenced above do not appear herein. Section 212 and the former section 213 are referenced on pages 262, 284, and 527 in Volume I. New sections 213 and 214 of the Federal Power Act appear above in sections 723 and 724 of this Act and among amendments and annotations of the 1935 Act in Supplement II at page S841.

October 24, 1992

ENERGY POLICY ACT OF 1992

3783

**(b) [Penalties applicable to transmission provisions.]**—Title III of the Federal Power Act is amended by inserting the following new section after section 316:

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

"(b) [Civil penalties.]—Any person who violates any provision of section 211, 212, 213, or 214 or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$10,000 for each day that such violation continues. Such penalty shall be assessed by the Commission, after notice and opportunity for public hearing in accordance with the same provisions; as are applicable under section 31(d) in the case of civil penalties assessed under section 31. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner." (106 Stat. 2920) (16 U.S.C. § 825o-1.)

**Sec. 726. [Definitions.]**—(a) **[Additional definitions.]**—Section 3 of the Federal Power Act is amended by adding the following at the end thereof:

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

"(24) [Wholesale, transmission services.]—The term 'wholesale transmission services' means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

"(25) [Exempt wholesale generator.]—The term 'exempt wholesale generator' shall have the meaning provided by section 32 of the Public Utility Holding Company Act of 1935." (16 U.S.C. § 796)

EXPLANATORY NOTE

<b>Reference in the Text.</b> Section 3 of the Federal Water Power Act (Act of June 20, 1920, ch. 285, 41 Stat. 1063; 16 U.S.C. § 796) appears at page 264 in Volume I and amendments thereto appear at pages S56 and S57 of	Supplement I and at page S813 in Supplement II. The Public Utility Holding Company Act of 1935 is referenced at page 527 of Volume I but does not appear therein.
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**(b) [Clarification of terms.]**—Section 3(22) of the Federal Power Act is amended by inserting "(including any municipality)" after "State agency". (106 Stat. 2921)

Subtitle C—State and Local Authorities

**Sec. 731. [State authorities.]**—Nothing in this title or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State or local government relating to environmental protection or the siting of facilities. (106 Stat. 2921; 15 U.S.C. § 79 note.)

\* \* \* \* \*

TITLE XVII—ADDITIONAL FEDERAL POWER ACT PROVISIONS

**Sec. 1701. [Additional Federal Water Power Act provisions.]—(a) [Annual charges for costs.]**—

(1) Section 10(e)(1) of the Federal Power Act (16 U.S.C. § 803.) is amended by striking the semicolon after "Part" and inserting the following: ", including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this part;"

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

EXPLANATORY NOTE

**Reference in the Text.** Section 10(e) of the Federal Water Power Act (Act of June 20, 1920, ch. 285, 41 Stat. 1068; 16 U.S.C. 803) appears on page 272 in Volume I and among the amendments and annotations of the 1920 Act in Supplement II at page S813.

**(b) [Clarification of authority regarding fishways.]**—The definition of the term "fishway" contained in 18 C.F.R. 4.30(b)(9)(iii), as in effect on the date of enactment of this Act, is vacated without prejudice to any definition or interpretation by rule of the term "fishway" by the Federal Energy Regulatory Commission for purposes of implementing section 18 of the Federal Power Act: *Provided*, That any future definition promulgated by regulatory rulemaking shall have no force or effect unless concurred in by the Secretary of the Interior and the Secretary of Commerce: *Provided further*, That the items which may constitute a "fishway" under section 18 for the safe and timely upstream and downstream

October 24, 1992

ENERGY POLICY ACT OF 1992

3785

passage of fish shall be limited to physical structures, facilities, or devices necessary to maintain all life stages of such fish, and project operations and measures related to such structures, facilities, or devices which are necessary to ensure the effectiveness of such structures, facilities, or devices for such fish. (16 U.S.C. § 811 note.)

**(c) [Extension of deadlines.]**—(1) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC Project No. 4031 (and after reasonable notice), is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend the time required for commencement of construction of such project for up to a maximum of 3 consecutive 2-year periods. This section shall take effect for such project upon the expiration of the extension (issued by the Commission under such section 13) of the period required for commencement of construction of such project.

(2) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC Project No. 6221 (and after reasonable notice), is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend the time required for commencement of construction of such project until July 29, 1995.

(3) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC project numbered 6641 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until June 29, 1996, the time required for the licensee to acquire the required real property and commence the construction of project numbered 6641, and until June 29, 2000, the time required for completion of construction of such project.

(4) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee of FERC project numbered 4656 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until March 26, 1999, the time required for the licensee to acquire the required real property and commence the construction of project numbered 4656.

(5) The authorization for issuing extensions under paragraphs (1) through (4) shall terminate 3 years after the date of enactment of this section. To facilitate requests under such subsections, the Commission may consolidate the

requests. The Commission shall provide at the beginning of each Congress a report on the status of all extensions granted by Congress regarding the requirements of section 13 of the Federal Power Act, including information about any delays by the Commission on the licensee and the reasons for such delays.

**(d) [Eminent domain.]**—Section 21 of the Federal Power Act is amended by striking the period at the end thereof and adding the following: *"Provided further, That no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992, were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law. In the case of lands or other property that are owned by a State or political subdivision and are part of or included within a public park, recreation area or wildlife refuge established under State or local law on or after the date of enactment of such Act, no licensee may use the right of eminent domain under this section to acquire such lands or property unless there has been a public hearing held in the affected community and a finding by the Commission, after due consideration of expressed public views and the recommendations of the State or political subdivision that owns the lands or property, that the license will not interfere or be inconsistent with the purposes for which such lands or property are owned."* (106 Stat. 3008) (16 U.S.C. § 814.)

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TITLE XXIV—NON-FEDERAL POWER ACT  
HYDROPOWER PROVISIONS

**Sec. 2401. [Rights-of-way on certain Federal lands.]**—Section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1761) is amended—

(1) by inserting in subsection (a) after "public lands" the following: "(including public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. § 818))";

(2) in paragraph (4) of subsection (a), by striking "Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. § 791)" and inserting in lieu thereof "Federal Energy Regulatory Commission under the Federal Power Act, including Part 1 thereof (41 Stat. 1063, 16 U.S.C. § 791a-825r)."; and

(3) by adding the following new subsection at the end thereof:

"(d) With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, Part I of the Federal Power Act which is

October 24, 1992

ENERGY POLICY ACT OF 1992

3787

located on lands subject to a reservation under section 24 of the Federal Power Act and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation." (106 Stat. 3096)

EXPLANATORY NOTE

**Reference in the Text.** Section 501 of the Federal Land Policy and Management Act of 1976 (Act of October 21, 1976, 90 Stat. 2776; 43 U.S.C. § 1761) appears in Volume IV at page 3002. Amendments and annotations of the 1976 Act appear in Supplement II at page S1058.

**Sec. 2402. [Dams in national park system units.]**—After the date of enactment of this Act, the Federal Energy Regulatory Commission may not issue an original license under Part I of the Federal Power Act (nor an exemption from such Part) for any new hydroelectric power project located within the boundaries of any unit of the National Park System that would have a direct adverse effect on Federal lands within any such unit. Nothing in this section shall be construed as repealing any existing provision of law (or affecting any treaty) explicitly authorizing a hydroelectric power project. (106 Stat. 3097; 16 U.S.C. § 797c.)

**Sec. 2403. [Third party contracting by FERC.]—(a) [Environmental impact statements.]**—Where the Federal Energy Regulatory Commission is required to prepare a draft or final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 and following) in connection with an application for a license under part I of the Federal Power Act, the Commission may permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant and chosen by the Commission from among a list of such individuals or companies determined by the Commission to be qualified to do such work, to prepare such statement for the Commission. The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

October 24, 1992

3788

ENERGY POLICY ACT OF 1992

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) appears in Volume IV at page 2492.

**(b) [Environmental assessments.]**—Where an environmental assessment is required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 and following) in connection with an application for a license under part I of the Federal Power Act, the Commission may permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information foreseeably required by the Commission. The Commission may allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

**(c) [Effective date.]**—This section shall take effect with respect to license applications filed after the enactment of this Act. (106 Stat. 3097; 16 U.S.C. § 797d.)

**Sec. 2404. [Improvement at existing Federal facilities.]—(a) [Studies of opportunities for increased hydroelectric generation.]**—The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary, shall perform reconnaissance level studies of cost effective opportunities to increase hydropower production at existing federally-owned or operated water regulation, storage, and conveyance facilities. Such studies shall be completed within 2 years after the date of enactment of this Act and transmitted to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and to the Committee on Energy and Commerce, the Committee on Interior and Insular Affairs, and the Committee on Public Works and Transportation of the United States House of Representatives. An individual study shall be prepared for each of the Nation's principal river basins. Each such study shall identify and describe with specificity the following matters:

(1) opportunities to improve the efficiency of hydroelectric generation at such facilities through, but not limited to, mechanical, structural, or operational changes;

(2) opportunities to improve the efficiency of the use of water supplied or regulated by Federal projects where such improvement could, in the absence of legal or administrative constraints, make additional water supplies available for hydroelectric generation or reduce project energy use;

(3) opportunities to create additional generating capacity at existing facilities through, but not limited to, the construction of additional generating units, the uprating of generators and turbines, and the construction of pumped storage

October 24, 1992

ENERGY POLICY ACT OF 1992

3789

facilities; and

(4) preliminary assessment of the costs and the economic and environmental consequences of such measures.

**(b) [Exception for previous studies.]**—In those cases where studies of the type required by this section have been prepared by any agency of the United States and published within the ten years prior to the date of enactment of this Act, the Secretary of the Interior, or the Secretary of the Army, may choose not to perform new studies but incorporate the information developed by such studies into the study reports required by this section.

**(c) [Authorization.]**—There is authorized to be appropriated in each of the fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section. (106 Stat. 3097; 109 Stat. 719; 16 U.S.C. § 797 note.)

EXPLANATORY NOTE

**1995 Amendment.** Subsection 1052(h) of the Act of December 21, 1995 (Public Law 104-66, 109 Stat. 707) amended section 2404 (1) in subsection (a), by striking "The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army," and inserting "The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary,"; and (2) in subsection (b), by striking "the Secretary" and inserting "the Secretary of the Interior, or the Secretary of the Army,". Extracts from the 1995 Act appear in Volume V at page 4070.

**Sec. 2405. [Water conservation and energy production.]—(a) [Studies.]**—The Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388), and Acts supplementary thereto and amendatory thereof, is authorized and directed to conduct feasibility investigations of opportunities to increase the amount of hydroelectric energy available for marketing by the Secretary from Federal hydroelectric power generation facilities resulting from a reduction in the consumptive use of such power for Federal reclamation project purposes or as a result of an increase in the amount of water available for such generation because of water conservation efforts on Federal reclamation projects or a combination thereof. The Secretary of the Interior is further authorized and directed to conduct feasibility investigations of opportunities to mitigate damages to or enhance fish and wildlife as a result of increasing the amount of water available for such purposes because of water conservation efforts on Federal reclamation projects. Such feasibility investigations shall include, but not be limited to—

- (1) an analysis of the technical, environmental, and economic feasibility of reducing the amount of water diverted upstream of such Federal hydroelectric power generation facilities by Federal reclamation projects;
- (2) an estimate of the reduction, if any, of project power consumed as a result of the decreased amount of diversion;
- (3) an estimate of the increase in the amount of electrical energy and related

October 24, 1992

3790

ENERGY POLICY ACT OF 1992

revenues which would result from the marketing of such power by the Secretary;

(4) an estimate of the fish and wildlife benefits which would result from the decreased or modified diversions;

(5) a finding by the Secretary of the Interior that the activities proposed in the feasibility study can be carried out in accordance with applicable Federal and State law, interstate compacts and the contractual obligations of the Secretary; and

(6) a finding by the affected Federal Power Marketing Administrator that the hydroelectric component of the proposed water conservation feature is cost-effective and that the affected Administrator is able to market the hydroelectric power expected to be generated.

**(b) [Consultation.]**—In preparing feasibility studies pursuant to this section, the Secretary of the Interior shall consult with, and seek the recommendations of, affected State, local and Indian tribal interests, and shall provide for appropriate public comment.

**(c) [Authorization.]**—There is hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this section. (106 Stat. 3098; 16 U.S.C. § 797 note.)

**Sec. 2406. [Federal projects in the Pacific Northwest—Effective date.]**—Without further appropriation and without fiscal year limitation, the Secretaries of the Interior and Army are authorized to plan, design, construct, operate and maintain generation additions, improvements and replacements, at their respective Federal projects in the Pacific Northwest Region as defined in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Public Law 96-501 (16 U.S.C. § 839a(14)), and to operate and maintain the respective Secretary's power facilities in the Region, that the respective Secretary determines necessary or appropriate and that the Bonneville Power Administrator subsequently determines necessary or appropriate, with any funds that the Administrator determines to make available to the respective Secretary for such purposes. Each Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, such funds shall continue to be exempt from sequestration pursuant to section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That this section shall not modify or affect the applicability of any provision of the Northwest Power Act. This provision shall be effective on October 1, 1993. (106 Stat. 3099; 16 U.S.C. § 839d-1.)

EXPLANATORY NOTE

**References in the Text.** The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Act of December 5, 1980 (Public Law 96-501, 94 Stat. 2697; 16 U.S.C. § 839a(14)) appears in Volume IV at page 3225. The Balanced Budget and Emergency Deficit Control Act of 1985 does not appear herein.

October 24, 1992

ENERGY POLICY ACT OF 1992

3791

**Sec. 2407. [Certain projects in Alaska.]—(a) [Authority to issue exemptions.]**—Except as provided in subsection (b) or (c), upon receipt of an application under this section, the Federal Energy Regulatory Commission (hereinafter in this section referred to as the "Commission") may grant, notwithstanding the provisions of section 2402, an exemption in whole or in part from the requirements of part I of the Federal Power Act, including any license requirements contained in part I of the Federal Power Act, to the following facilities located in the State of Alaska:

(1) a project located at Sitka, Alaska, with application numbered UL89-08-000;

(2) a project located at Juneau, Alaska, with preliminary permit numbered 10681-000; and

(3) a project located near Nondalton, Alaska, with application numbered EL88-25-001.

**(b) [Capacity limitations.]**—No exemption under subsection (a) shall be applicable to any facility the installed capacity of which exceeds 5 megawatts.

**(c) [Mandatory terms and conditions.]**—In making the determination under subsection (a), the Commission shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State of Alaska, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

(1) such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

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

**(d) [Enforcement.]**—Any violation of a term or condition of any exemption granted under subsection (a) shall be treated as a violation of a rule or order of the Commission under the Federal Power Act.

**(e) [Fees.]**—The Commission may establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.

**(f) [Expedited processing.]**—A completed application for an exemption under this section shall be acted on by the Commission in an expedited manner,

October 24, 1992

3792

ENERGY POLICY ACT OF 1992

in accordance with this section, within 6 months after the date on which the application for such exemption is applied for, or as promptly as practicable thereafter. (106 Stat. 3099)

EXPLANATORY NOTE

**Reference in the Text.** The Fish and Wildlife Coordination Act, Act of August 14, 1946 (ch. 965, 60 Stat. 1080) appears in Volume II at page 839. Amendments to the Act appear in Volume III at pages 1823 and 1434. Annotations appear in Supplement I at page S167.

**Sec. 2408. [Projects on fresh waters in State of Hawaii.]**—The Federal Energy Regulatory Commission, in consultation with the State of Hawaii, shall carry out a study of hydroelectric licensing in the State of Hawaii. For purposes of considering whether such licensing should be transferred to the State, within 18 months after the enactment of this Act, the Commission shall complete the study and submit a report containing the results of the study to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate. The study shall examine, and the report shall at a minimum contain an analysis of, each of the following:

(1) The State regulatory programs applicable to hydroelectric power production and the extent to which such programs are suitable as a substitute for regulation of such projects under the Federal Power Act, taking into consideration all aspects of such regulation, including energy, environmental, and safety considerations.

(2) Any unique geographical, hydrological, or other characteristics of waterways in Hawaii or any other aspects of hydroelectric power development and natural resource protection in Hawaii that would justify or not justify the permanent transfer of Federal Energy Regulatory Commission jurisdiction over hydroelectric power projects to that State.

(3) The adequacy of mechanisms and procedures for consideration of fish and wildlife and other environmental values applicable in connection with hydroelectric power development in Hawaii under the State programs referred to in paragraph (1).

(4) Any national policy considerations that would justify or not justify the removal of Federal Energy Regulatory Commission jurisdiction over hydroelectric power projects in Hawaii.

(5) The precedent-setting effect, if any of provisions of law adopted by the Congress removing Federal Energy Regulatory Commission jurisdiction over hydroelectric power projects in Hawaii. (106 Stat. 3100; 16 U.S.C. § 797 note.)

**Sec. 2409. [Evaluation of development potential.]**—The Act of August 30, 1935 (Public Law No. 409 of the 74th Congress, 49 Stat. 1028), is amended by

October 24, 1992

ENERGY POLICY ACT OF 1992

3793

inserting "The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents;" after "Document Numbered 15, Seventy-fourth Congress;". (106 Stat. 3101)

EXPLANATORY NOTE

**Reference in the Text.** An extract from the Act of August 30, 1935 (Public Law No. 409 of the 74th Congress, 49 Stat. 1028) appears in Volume I at page 538 and in Supplement II at page S851.

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TITLE XXVI-INDIAN ENERGY RESOURCES

**Sec. 2601. [Definitions.]**—For purposes of this title—(1) 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 (43 U.S.C. § 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) the term "Indian reservation" includes Indian reservations; public domain Indian allotments; former Indian reservations in Oklahoma; land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.); and dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State. (106 Stat. 3113; 25 U.S.C. § 3501.)

EXPLANATORY NOTE

**Reference in the Text.** The Alaska Native Claims Settlement Act (106 Stat. 3113; 25 U.S.C. § 3501, 43 U.S.C. § 1601 et seq.) does not appear herein.

**Sec. 2602. [Tribal consultation.]**—In implementing the provisions of this Act, the Secretary of Energy shall involve and consult with Indian tribes to the maximum extent possible and where appropriate and shall do so in a manner that is consistent with the Federal trust and the Government-to-Government relationships between Indian tribes and the Federal Government. (25 U.S.C. § 3502.)

**Sec. 2603. [Promoting energy resource development and energy vertical integration on Indian reservations.]—(a) [Demonstration programs.]**—The Secretary of Energy, in consultation with the Secretary of the Interior, shall establish and implement a demonstration program to assist Indian tribes in pursuing energy self-sufficiency and to promote the development of a vertically integrated energy industry on Indian reservations, in order to increase development of the substantial energy resources located on such Indian reservations. Such program shall include, but not be limited to, the following components:

(1) The Secretary shall provide development grants to Indian tribes or to joint ventures which are 51 percent or more controlled by an Indian tribe to assist Indian tribes in obtaining the managerial and technical capability needed to develop the energy resources on Indian reservations. Such grants shall include provisions for management training for tribal or village members, improving the technical capacity of the Indian tribe, and the reduction of tribal unemployment. Each grant shall be for a period of 3 years.

(2) The Secretary shall provide grants, not to exceed 50 percent of the project costs, for vertical integration projects. For purposes of this paragraph, the term "vertical integration project" means a project that promotes the vertical integration of the energy resources on an Indian reservation, so that the energy resources are used or processed on such Indian reservation. Such term includes, but is not limited to, projects involving solar and wind energy, oil refineries, the generation and transmission of electricity, hydroelectricity, cogeneration, natural gas distribution, and clean, innovative uses of coal.

(3) The Secretary shall provide technical assistance (and such other assistance as is appropriate) to Indian tribes for energy resource development and to promote the vertical integration of energy resources on Indian reservations.

**(b) [Low interest loans.]—(1) [In general.]**—The Secretary shall establish a program for making low interest loans to Indian tribes. Such loans shall be used exclusively by Indian tribes in the promotion of energy resource development and vertical integration on Indian reservations.

**(2) [Terms.]**—The Secretary shall establish reasonable terms for loans made under this section which are to be used to carry out the purposes of this section.

**(c) [Authorization of appropriations.]**—There are authorized to be appropriated—

(1) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (a)(1);

(2) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (a)(2); and (3) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (b).

October 24, 1992

ENERGY POLICY ACT OF 1992

3795

**Sec. 2604. [Indian energy resource regulation.]—(a) [Grants.]—**The Secretary of the Interior is authorized to make annual grants to Indian tribes for the purpose of assisting Indian tribes in the development, administration, implementation, and enforcement of tribal laws and regulations governing the development of energy resources on Indian reservations.

**(b) [Purpose.]—**The purposes for which funds provided under a grant awarded under subsection (a) may be used include, but are not limited to—

- (1) the training and education of employees responsible for enforcing or monitoring compliance with Federal and tribal laws and regulations;
- (2) the development of tribal inventories of energy resources;
- (3) the development of tribal laws and regulations;
- (4) the development of tribal legal and governmental infrastructure to regulate environmental quality pursuant to Federal and tribal laws; and
- (5) the enforcement and monitoring of Federal and tribal laws and regulations.

**(c) [Other assistance.]—**The Secretary of the Interior and the Secretary of Energy shall cooperate with and provide assistance to Indian tribes for the purpose of assisting Indian tribes in the development, administration, and enforcement of tribal programs. Such cooperation and assistance shall include the following:

- (1) Technical assistance and training, including the provision of necessary circulars and training materials.
- (2) Assistance in the preparation and maintenance of a continuing inventory of information on tribal energy resources and tribal operations. In providing assistance under this paragraph, Federal departments and agencies shall make available to Indian tribes all relevant data concerning tribal energy resource development consistent with applicable laws regarding disclosure of proprietary and confidential information.

**(d) [Authorization of appropriations.]—**There are authorized to be appropriated \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of this section. (106 Stat. 3114; 25 U.S.C. § 3504.)

**Sec. 2605. [Indian Energy Resource Commission.]—(a) [Establishment.]—**There is hereby established the Indian Energy Resource Commission (hereafter in this section referred to as the "Commission").

**(b) [Membership.]—**The Commission shall consist of—(1) 8 members appointed by the Secretary of the Interior from recommendations submitted by Indian tribes with developable energy resources, at least 4 of whom shall be elected tribal leaders;

(2) 3 members appointed by the Secretary of the Interior from recommendations submitted by the Governors of States that have Indian reservations with developable energy resources;

(3) 2 members appointed by the Secretary of the Interior from among individuals in the private sector with expertise in tribal and State taxation of energy resources;

(4) 2 members appointed by the Secretary of the Interior from individuals with expertise in oil and gas royalty management administration, including auditing and accounting;

(5) 2 members appointed by the Secretary of the Interior from individuals in the private sector with expertise in energy development;

(6) 1 member appointed by the Secretary of the Interior from recommendations submitted by National environmental organizations;

(7) the Secretary of the Interior, or his designee; and

(8) the Secretary of Energy, or his designee.

**(c) [Appointments.]**—Members of the Commission shall be appointed not later than 60 days after the date of the enactment of this title.

**(d) [Vacancies.]**—A vacancy in the Commission shall be filled in the same manner as the original appointment was made, A vacancy in the Commission shall not affect the powers of the Commission.

**(e) [Chairperson.]**—The members of the Commission shall elect a Chairperson from among the members of the Commission.

**(f) [Quorum.]**—Eleven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

**(g) [Organizational meeting.]**—The Commission shall hold an organizational meeting to establish the rules and procedures of the Commission not later than 30 days after the members are first appointed to the Commission.

**(h) [Compensation.]**—Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission, not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation.

**(i) [Travel.]**—While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees under sections 5702 and 5703 of title 5, United States Code.

**(j) [Commission staff.]**—**(1) [Executive Director.]**—The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

**(2) [Additional personnel.]**—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional

October 24, 1992

ENERGY POLICY ACT OF 1992

3797

personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such appointments shall be made in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not to exceed the rate of basic pay payable for level 15 of the General Schedule.

**(3) [Experts and consultants.]**—Subject to such rules as may be issued by the Commission, the Chairperson may procure temporary and intermittent services of experts and consultants to the same extent as is authorized by section 3109 of title 6, United States Code, but at rates not to exceed \$200 a day for individuals.

**(4) [Personnel detail authorized.]**—Upon the request of the Chairperson, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title. Such detail shall be without interruption or loss of civil service status or privilege.

**(k) [Duties of the Commission.]**—The Commission shall—(1) develop proposals to address the dual taxation by Indian tribes and States of the extraction of mineral resources on Indian reservations;

(2) make recommendations to improve the management, administration, accounting and auditing of royalties associated with the production of oil and gas on Indian reservations;

(3) develop alternatives for the collection and distribution of royalties associated with production of oil and gas on Indian reservations;

(4) develop proposals on incentives to foster the development of energy resources on Indian reservations;

(5) identify barriers or obstacles to the development of energy resources on Indian reservations, and make recommendations designed to foster the development of energy resources on Indian reservations and promote economic development;

(6) develop proposals for the promotion of vertical integration of the development of energy resources on Indian reservations; and

(7) develop proposals on taxation incentives to foster the development of energy resources on Indian reservations including, but not limited to, investment tax credits and enterprise zone credits.

**(l) [Powers of the Commission.]**—The powers of the Commission shall include the following:

(1) For the purpose of carrying out its duties under this section, the Commission may hold hearings, take testimony, and receive evidence at such times and places as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out its duties under this section.

**(m) [Commission report.]—(1) [In general.]**—The Commission shall, within 12 months after funds are made available to carry out this section, prepare and transmit to the President, the Committee on Interior and Insular Affairs of the House of Representatives, the Select Committee on Indian Affairs of the Senate, and the Committee on Energy and Natural Resources of the Senate, a report containing the recommendations and proposals specified in subsection (k).

**(2) [Review and comment.]**—Prior to submission of the report required under this section, the Chairman shall circulate a draft of the report to Indian tribes and States that have Indian reservations with developable energy resources and other interested tribes and States for review and comment.

**(n) [Authorization of appropriations.]**—There are authorized to be appropriated to the Commission \$1,000,000 to carry out this section. Such sum shall remain available, without fiscal year limitation, until expended.

**(o) [Termination .]**—The Commission shall terminate 30 days after submitting the final report required by subsection (m). (106 Stat. 3115; 25 U.S.C. § 3505.)

**Sec. 2606. [Tribal Government Energy Assistance Program.]—(a) [Financial assistance.]**—The Secretary may grant financial assistance to Indian tribal governments, or private sector persons working in cooperation with Indian tribal governments, to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy projects on Indian reservations. Such grants may include the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial, or management issues identified by the applicants for such grants.

**(b) [Conditions.]**—Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, local educational institutions and the affected local energy institutions.

**(c) [Considerations.]**—In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

- (1) the extent of involvement of local educational institutions and local energy institutions;
- (2) the ease and costs of operation and maintenance of any project contemplated as a part of the project;
- (3) whether the measure will contribute significantly to the development, or the quality of the environment, of the affected Indian reservations; and

October 24, 1992

ENERGY POLICY ACT OF 1992

3799

(4) any other factors which the Secretary may determine to be relevant to a particular project.

**(d) [Cost-share.]**—With the exception of grants awarded for the purpose of feasibility studies, the Secretary shall require at least 20 percent of the costs of any project under this section to be provided from non-Federal sources, unless the grant recipient is a for-profit private sector institution, in which case the Secretary shall require at least 50 percent of the costs of any project to be provided from non-Federal sources.

**(e) [Authorization of appropriations.]**—There are authorized to be appropriated such sums as are necessary for the development and implementation of the program established by this section. (106 Stat. 3118; 25 U.S.C. § 3506.)

\* \* \* \* \*

EXPLANATORY NOTE

**Legislative History.** H.R. 776 (S. 2166), Public Law 102-486 in the 102<sup>nd</sup> Congress. Reported in the House from Energy and Commerce, Pt. 1; Science, Space, and Technology, Pt. 2; Public Works and Transportation, Pt. 3; Foreign Affairs, Pt. 4; Government Operations, Pt. 5; Ways and Means, Pt. 6; Judiciary, Pt. 7; Interior and Insular Affairs, Pt. 8; and Merchant Marine and Fisheries, Pt. 9; H.R. Repts. Nos. 102-474 and 102-1018 (Conference). S. 2166 considered and passed Senate February 5-7, 18, 19, 1992. H.R. 776 considered and passed House May 20, 21, 27, 1992. Considered and passed Senate, amended July 29, 30, 1992. House agreed to conference report and Senate considered conference report October 5, 1992. Senate agreed to conference report October 8, 1992. (106 Stat.3133)

**SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT  
TECHNICAL AMENDMENTS ACT OF 1992; AK-CHIN  
WATER USE AMENDMENTS ACT OF 1992**

[Extracts from] an Act to make technical amendments to certain Federal Indian statutes. (Act of October 24, 1992 Public Law 102-497, 106 Stat. 3255)

\* \* \* \* \*

**Sec. 6. [Amendments to the San Carlos Irrigation Project Divestiture Act of 1991.]**—The San Carlos Indian Irrigation Project Divestiture Act of 1991 (Public Law 102-231; 105 Stat. 1722 et seq.) is amended by—

- (1) deleting in sections 4(a) and 10(b) the date "December 31, 1992" and inserting in lieu thereof the date "July 31, 1993";
- (2) inserting immediately before the period at the end of paragraph (1) of subsection 5(a) the phrase "and otherwise administer all customer accounts"; and
- (3) deleting "5(a)(2)" in the second sentence of section 6 and inserting in lieu thereof "5(a)(5)".

EXPLANATORY NOTE

**Reference in the Text.** The San Carlos Indian Irrigation Project Divestiture Act of 1991 (Act of December 12, 1991, Public Law 102-231; 105 Stat. 1722 et seq.) appears in Volume V at page 3727.

\* \* \* \* \*

**Sec. 8. [Technical amendments to Southern Arizona Water Rights Settlement Act of 1982.]**—(a) [Short title.]— This section may be cited as the "Southern Arizona Water Rights Settlement Technical Amendments Act of 1992".

(b) [Technical amendments.]—The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1284) is amended as follows:

- (1) in section 313(b)(1)(A), delete "paragraph (3)" and insert in lieu thereof "paragraph (2)";
- (2) in clauses (i), (ii) and (iii) of section 313(b)(1)(B), delete "(adjusted as provided in paragraph (2))" each place it appears and insert in lieu thereof "which has been";
- (3) in section 313(b)(1)(C), immediately before the period at the end thereof, insert a comma and the following: "including all interest which has accrued to the Fund since the Fund was established and all interest which accrued on contributions and appropriations to the Fund from October 12, 1985, to the

October 24, 1992

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT 3801

date of the enactment of the Southern Arizona Water Rights Settlement Technical Amendments Act of 1992";

(4) in subsection (b), delete paragraph (2) and renumber paragraph (3) as paragraph (2);

(5) amend section 313 by adding at the end thereof the following new subsection:

"(g)(1) Notwithstanding the provisions of subsection (e), if no funds contributed to the Cooperative Fund pursuant to subsection(b)(1)(B) (or accrued interest thereon) have been returned to any of the contributors, the Cooperative Fund shall not be terminated; except that, if the final judgment in the lawsuit referred to in section 307(a)(1)(C) does not dismiss all claims against the defendants named therein, the Cooperative Fund shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of the remaining accrued interest) to the respective contributors.

"(2)(A) If the share contributed to the Cooperative Fund by the United States has been deposited in the General Fund of the Treasury pursuant to subsection (e), there is authorized to be appropriated to the Cooperative Fund the amount so deposited in the General Fund of the Treasury, adjusted to include an amount representing the additional interest which would have been earned by the Cooperative Fund if that portion had not been deposited in the General Fund of the Treasury.

"(B) If the final judgment in the lawsuit referred to in section 307(a)(1)(C) does not dismiss all claims against the defendants named therein, the share of the Cooperative Fund contributed by the United States shall be deposited in the General Fund of the Treasury.";

(6) in section 304(e)(2), delete ", as long as such water is used for irrigation of Indian Lands";

(7) in section 306(c), by adding at the end thereof the following new paragraph:

"(3) For the purpose of determining allocation and repayment of costs of the Central Arizona Project as provided in article 9.3 of contract numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District, dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of Central Arizona Project water under the sales, exchanges or temporary dispositions herein authorized shall be nonreimbursable, and such costs shall be excluded from such District's repayment obligation."; and

(8) in sections 313(c)(1)(A), 304(c)(1) and 305(d)(1), immediately after "10 years" each place it appears, insert "and months". (106 Stat. 3256)

October 24, 1992

3802 SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

EXPLANATORY NOTE

**Reference in the Text.** The Southern Law 97-293; 96 Stat. 1274) appears in Volume Arizona Water Rights Settlement Act of 1982 IV at page 3348 and, as amended, in (Title III of Act of October 12, 1982, Public Supplement II at page S1108.

\* \* \* \* \*

**Sec. 10. [Technical amendments to Ak-Chin Water Use Act of 1984.]—**

**(a) [Short title.]—**This section may be cited as the "Ak-Chin Water Use Amendments Act of 1992".

**(b) [Authorization of use of water.]—**Section 2(j) of the Act of October 19, 1984 (Public Law 98-530; 98 Stat. 2698) is amended to read as follows:

"(j) The Ak-Chin Indian Community (hereafter in this Act referred to as the 'Community') shall have the right to devote the permanent water supply provided for by this Act to any use, including agricultural, municipal, industrial, commercial, mining, recreational or other beneficial use, in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1. The community is authorized to lease or enter into an option to lease, extend leases, exchange or temporarily dispose of water to which it is entitled for beneficial use in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1: *Provided*, That the term of any such lease shall not exceed 100 years and the Community may not permanently alienate any water right. In the event the Community leases, extends leases, exchanges or temporarily disposes of water, such action shall be pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary."

EXPLANATORY NOTE

**Reference in the Text.** The Act of October 19, 1984 (Public Law 98-530; 98 Stat. 2698) appears in Volume V at page 3431.

\* \* \* \* \*

EXPLANATORY NOTES

**Not Codified.** The selected sections of this Act are not codified in the U.S. Code.

**Legislative History.** H.R. 5686, Public Law 102-497 in the 102<sup>nd</sup> Congress. Reported in the House from Interior and Insular Affairs; H.R. Repts. No. 102-774. Passed House on August 3,

1992. Reported in the Senate from Indian Affairs, S. Repts. No. 102-428. Passed the Senate, amended, October 1, 1992. House concurred in Senate amendment, October 3, 1992.

October 30, 1992

3803

## **RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992**

An Act to authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming [and for other purposes covered by forty separate titles]. (Act of October 30, 1992, Public Law 102-575, 106 Stat. 4600)

**Section 1. [Short title.]**—This Act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1992".

**Sec. 2. [Definition and table of contents.]**—For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

### TABLE OF CONTENTS

Sec. 1. Short title.

Sec. 2. Definition and table of contents.

#### TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

Sec. 101. Additional authorization of appropriations.

#### TITLE II—UTAH—CENTRAL UTAH PROJECT CONSTRUCTION

Sec. 200. Short title and definitions for titles II-VI.

Sec. 201. Authorization of additional amounts for the Colorado River Storage Project.

Sec. 202. Bonneville Unit water development.

Sec. 203. Uinta Basin Replacement Project.

Sec. 204. Non-Federal contribution.

Sec. 205. Definite Plan Report and environmental compliance.

Sec. 206. Local development in lieu of irrigation and drainage.

Sec. 207. Water management improvement.

Sec. 208. Limitation on hydropower operations.

Sec. 209. Operating agreements.

Sec. 210. Jordan Aqueduct prepayment.

Sec. 211. Audit of Central Utah Project cost allocations.

Sec. 212. Surplus crops.

October 30, 1992

## 3804 RECLAMATION PROJECTS AND AUTHORIZATION ACT

### TITLE III-UTAH-FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION

- Sec. 301. Utah Reclamation Mitigation and Conservation Commission
- Sec. 302. Increased project water capability.
- Sec. 303. Stream flows.
- Sec. 304. Fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report for the Central Utah Project.
- Sec. 305. Wildlife lands and improvements.
- Sec. 306. Wetlands acquisition, rehabilitation, and enhancement.
- Sec. 307. Fisheries acquisition, rehabilitation, and enhancement.
- Sec. 308. Stabilization of high mountain lakes in the Uinta mountains.
- Sec. 309. Stream access and riparian habitat development.
- Sec. 310. Section 8 expenses.
- Sec. 311. Jordan and Provo River Parkways and natural areas.
- Sec. 312. Recreation.
- Sec. 313. Fish and wildlife features in the Colorado River Storage project.
- Sec. 314. Concurrent mitigation appropriations.
- Sec. 315. Fish, wildlife, and recreation schedule.

### TITLE IV-UTAH RECLAMATION MITIGATION AND CONSERVATION ACCOUNT

- Sec. 401. Findings and purpose.
- Sec. 402. Utah Reclamation Mitigation and Conservation Account.

### TITLE V-UTE INDIAN RIGHTS SETTLEMENT

- Sec. 501. Findings.
- Sec. 502. Provisions for payment to the Ute Indian Tribe.
- Sec. 503. Tribal use of water.
- Sec. 504. Tribal farming operations.
- Sec. 505. Reservoirs, stream, habitat, and road improvements with respect to the Ute Indian Reservation.
- Sec. 506. Tribal development funds.
- Sec. 507. Waiver of claims.

### TITLE VI-ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

### TITLE VII-LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

- Sec. 701. Authorization.
- Sec. 702. Costs nonreimbursable.

October 30, 1992

RECLAMATION PROJECTS AND AUTHORIZATION ACT 3805

- Sec. 703. Operation and maintenance.
- Sec. 704. Appropriations authorized.
- Sec. 705. Limitation.
- Sec. 706. Design and operation notification.
- Sec. 707. Fish and wildlife restoration.
- Sec. 708. Water quality restoration.

TITLE VIII-LAKE MEREDITH SALINITY CONTROL PROJECT,  
TEXAS AND NEW MEXICO

- Sec. 801. Authorization to construct and test.
- Sec. 802. Construction contract with the Canadian River Municipal Water Authority.
- Sec. 803. Project costs.
- Sec. 804. Construction and control.
- Sec. 805. Transfer of title.
- Sec. 806. Authorization.

TITLE IX-CEDAR BLUFF UNIT, KANSAS

- Sec. 901. Authorization.
- Sec. 902. Contract, for the sale use and control of the operating pool.
- Sec. 903. Contract, for payment of costs and charges.
- Sec. 904. Transfer of district headquarters.
- Sec. 905. Liability and indemnification.
- Sec. 906. Additional actions.

TITLE X-SOUTH DAKOTA WATER PLANNING STUDIES

- Sec. 1001. Authorization for South Dakota water planning studies.

TITLE XI-SALTON SEA RESEARCH PROJECT, CALIFORNIA

- Sec. 1101. Research project.

TITLE XII-AMENDMENT TO SABINE RIVER COMPACT

- Sec. 1201. Consent to amendment to Sabine River compact.
- Sec. 1202. Compact described.
- Sec. 1203. Amendment.

October 30, 1992

3806 RECLAMATION PROJECTS AND AUTHORIZATION ACT

TITLE XIII—SALT-GILA AQUEDUCT, ARIZONA

- Sec. 1301. Designation.
- Sec. 1302. References.

TITLE XIV—VERMEJO PROJECT RELIEF, NEW MEXICO

TITLE XV—SAN LUIS VALLEY PROTECTION, COLORADO

- Sec. 1501. Permit issuance prohibited.
- Sec. 1502. Judicial review.
- Sec. 1503. Costs.
- Sec. 1504. Disclaimers.

TITLE XVI—RECLAMATION WASTEWATER AND  
GROUND WATER STUDIES

- Sec. 1601. Short title.
- Sec. 1602. General authority.
- Sec. 1603. Appraisal investigations.
- Sec. 1604. Feasibility studies.
- Sec. 1605. Research and demonstration projects.
- Sec. 1606. Southern California comprehensive water reclamation and reuse study.
- Sec. 1607. San Jose area water reclamation and reuse program.
- Sec. 1608. Phoenix metropolitan water reclamation study and program.
- Sec. 1609. Tucson area water reclamation study.
- Sec. 1610. Lake Charaw water reclamation and reuse study.
- Sec. 1611. San Francisco area water reclamation study.
- Sec. 1612. San Diego area water reclamation program.
- Sec. 1613. Los Angeles area water reclamation and reuse project.
- Sec. 1614. San Gabriel Basin demonstration project.
- Sec. 1615. North San Diego County Area Water Recycling Project.
- Sec. 1616. Calleguas Municipal Water District Recycling Project.
- Sec. 1617. Central Valley Water Recycling Project.
- Sec. 1618. St. George Area Water Recycling Project.
- Sec. 1619. Watsonville Area Water Recycling Project.
- Sec. 1620. Southern Nevada Water Recycling Project.
- Sec. 1621. Albuquerque Metropolitan Area Water Reclamation and Reuse Study.
- Sec. 1622. El Paso Water Reclamation and Reuse Project.
- Sec. 1623. Reclaimed water in Pasadena.
- Sec. 1624. Phase 1 of the Orange County Regional Water Reclamation Project.

October 30, 1992

## RECLAMATION PROJECTS AND AUTHORIZATION ACT 3807

- Sec. 1625. City of West Jordan Water Reuse Project.
- Sec. 1626. Hi-Desert Water District in Yucca Valley, California Wastewater Collection and Reuse Facility.
- Sec. 1627. Mission Basin Brackish Groundwater Desalting Demonstration Project.
- Sec. 1628. Treatment of effluent from the sanitation districts of Los Angeles County through the City of Long Beach.
- Sec. 1629. San Joaquin Area Water Recycling and Reuse Project.
- Sec. 1630. Tooele Wastewater Treatment and Reuse Project.
- Sec. 1631. Authorization of appropriations.
- Sec. 1632. Ground water study.
- Sec. 1633. Authorization of appropriations.

### EXPLANATORY NOTE

**1996 Amendment.** Section 2(c) of the Act of October 9, 1996 (Public Law 104-266, 110 Stat. 3294) amended the table of sections as follows: (1) by redesignating the items relating to sections 1615, 1616, and 1617 as items relating to sections 1631, 1632, and 1633, respectively, and (2) by inserting after the item relating to section 1614 the new items 1615 through 1630. The 1996 Act appears in Volume V in chronological order.

## TITLE XVII—IRRIGATION ON STANDING ROCK INDIAN RESERVATION, NORTH DAKOTA

- Sec. 1701. Irrigation on Standing Rock Indian Reservation.

## TITLE XVIII—GRAND CANYON PROTECTION

- Sec. 1801. Short title.
- Sec. 1802. Protection of Grand Canyon National Park.
- Sec. 1803. Interim protection of Grand Canyon National Park.
- Sec. 1804. Glen Canyon Dam environmental impact statement; long-term operation of Glen Canyon Dam.
- Sec. 1805. Long-term monitoring.
- Sec. 1806. Rules of construction.
- Sec. 1807. Studies nonreimbursable.
- Sec. 1808. Authorization of appropriations.
- Sec. 1809. Replacement power.

## TITLE XIX—MID-DAKOTA RURAL WATER SYSTEM

- Sec. 1901. Short title.
- Sec. 1902. Definitions.
- Sec. 1903. Federal assistance for rural water system.

October 30, 1992

### 3808 RECLAMATION PROJECTS AND AUTHORIZATION ACT

- Sec. 1904. Federal assistance for wetland development and enhancement.
- Sec. 1905. Water conservation.
- Sec. 1906. Mitigation of fish and wildlife losses.
- Sec. 1907. Use of Pick-Sloan power.
- Sec. 1908. Rule of construction.
- Sec. 1909. Water rights.
- Sec. 1910. Use of government facilities.
- Sec. 1911. Authorization of appropriations.

#### TITLE XX—LAKE ANDES-WAGNER/MARTY II, SOUTH DAKOTA

- Sec. 2001. Short title.
- Sec. 2002. Demonstration program.
- Sec. 2003. Planning reports-environmental impact statements.
- Sec. 2004. Authorization of the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota.
- Sec. 2005. Conditions.
- Sec. 2006. Indian employment.
- Sec. 2007. Federal reclamation laws govern.
- Sec. 2008. Cost sharing.
- Sec. 2009. Authorization of appropriations.
- Sec. 2010. Indian water rights.

#### TITLE XXI—RIO GRANDE FLOODWAY, SAN ACACIA TO BOSQUE DEL APACHE UNIT, NEW MEXICO

- Sec. 2101. Clarification of cost-share requirements.

#### TITLE XXII—SUNNYSIDE VALLEY IRRIGATION DISTRICT, WASHINGTON

- Sec. 2201. Conveyance to Sunnyside Valley Irrigation District.

#### TITLE XXIII—PLATORO RESERVOIR AND DAM, SAN LUIS VALLEY PROJECT, COLORADO

- Sec. 2301. Findings and declarations.
- Sec. 2302. Transfer of operation and maintenance responsibility of Platoro Reservoir.
- Sec. 2303. Definitions.

October 30, 1992

RECLAMATION PROJECTS AND AUTHORIZATION ACT 3809

TITLE XXIV—REDWOOD COUNTY WATER DISTRICT,  
CALIFORNIA

- Sec. 2401. Sale of Bureau of Reclamation loans.
- Sec. 2402. Savings provisions.
- Sec. 2403. Fees and expenses of program.
- Sec. 2404. Termination of authority.

TITLE XXV—UNITED WATER CONSERVATION DISTRICT,  
CALIFORNIA

- Sec. 2501. Sale of the Freeman Diversion Improvement Project loan.
- Sec. 2502. Termination and conveyance of rights.
- Sec. 2503. Termination of authority.

TITLE XXVI—HIGH PLAINS GROUNDWATER PROGRAM

- Sec. 2601. High Plains States Groundwater Demonstration Program Act.

TITLE XXVII—MONTANA IRRIGATION PROJECTS

- Sec. 2701. Pick-Sloan project pumping power.

TITLE XXVIII—RECLAMATION RECREATION MANAGEMENT ACT

- Sec. 2801. Short title.
- Sec. 2802. Findings.
- Sec. 2803. Definitions.
- Sec. 2804. Amendments to the Federal Water Project Recreation Act.
- Sec. 2805. Management of reclamation lands.
- Sec. 2806. Protection of authorized purposes of reclamation projects.

TITLE XXIX—SAN JUAN SUBURBAN WATER DISTRICT,  
CENTRAL VALLEY PROJECT, CALIFORNIA

- Sec. 2901. Repayment of water pumps, San Juan Suburban Water District, Central Valley Project, California.

TITLE XXX—WESTERN WATER POLICY REVIEW

- Sec. 3001. Short title.
- Sec. 3002. Congressional findings.
- Sec. 3003. Presidential review.
- Sec. 3004. The Advisory Commission.

October 30, 1992

**3810 RECLAMATION PROJECTS AND AUTHORIZATION ACT**

- Sec. 3005. Duties of the Commission.
- Sec. 3006. Representatives.
- Sec. 3007. Powers of the Commission.
- Sec. 3008. Powers and duties of the Chairman.
- Sec. 3009. Other Federal agencies.
- Sec. 3010. Appropriations.

**TITLE XXXI—MOUNTAIN PARK MASTER  
CONSERVANCY DISTRICT, OKLAHOMA**

- Sec. 3101. Payment by Mountain Park Master Conservancy District.
- Sec. 3102. Reschedule of repayment obligation.

**TITLE XXXII—SOUTH DAKOTA PRESERVATION  
AND RESTORATION TRUST**

**Subpart A-Biological Diversity Trust**

- Sec. 3201. South Dakota biological diversity trust

**Subpart B-Wetland Habitat Restoration Program**

- Sec. 3202. Definitions.
- Sec. 3203. Wetland trust.
- Sec. 3204. Authorization of appropriations.

**TITLE XXXIII—ELEPHANT BUTTE IRRIGATION DISTRICT,  
NEW MEXICO**

- Sec. 3301. Transfer.
- Sec. 3302. Limitation.
- Sec. 3303. Effect of Act on other laws.

**TITLE XXXIV—CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

- Sec. 3401. Short title.
- Sec. 3402. Purposes.
- Sec. 3403. Definitions.
- Sec. 3404. Limitation on contracting and contract reform.
- Sec. 3405. Water transfers, improved water management and conservation.
- Sec. 3406. Fish, wildlife and habitat restoration.
- Sec. 3407. Restoration fund.
- Sec. 3408. Additional authorities.
- Sec. 3409. Environmental review.
- Sec. 3410. Authorization of appropriations.

October 30, 1992

RECLAMATION PROJECTS AND AUTHORIZATION ACT 3811

Sec. 3411. Compliance with state water law and coordinated operations agreement.  
Sec. 3412. Extension of the Tehama-Colusa Canal service area.

TITLE XXXV—THREE AFFILIATED TRIBES AND  
STANDING ROCK SIOUX TRIBE EQUITABLE  
COMPENSATION PROGRAM, NORTH DAKOTA

Sec. 3501. Short title.  
Sec. 3502. Definitions.  
Sec. 3503. Findings; Declarations.  
Sec. 3504. Funds.  
Sec. 3505. Eligibility for other services not affected.  
Sec. 3506. Per capita payments prohibited.  
Sec. 3507. Standing Rock Sioux Indian Reservation.  
Sec. 3508. Transfer of lands.  
Sec. 3509. Transfer of lands at the Oahe Dam and Lake project.  
Sec. 3510. Conforming amendment.  
Sec. 3511. Authorization.

TITLE XXXVI—SONOMA BAYLANDS WETLAND  
DEMONSTRATION PROJECT, CALIFORNIA

Sec. 3601. Sonoma Baylands wetland demonstration project.

TITLE XXXVII—SAN CARLOS APACHE TRIBE  
WATER RIGHTS SETTLEMENT, ARIZONA

Sec. 3701. Short title.  
Sec. 3702. Congressional findings.  
Sec. 3703. Definitions.  
Sec. 3704. Water.  
Sec. 3705. Ratification and confirmation of contracts.  
Sec. 3706. Water delivery contract amendments; water lease, water withdrawal.  
Sec. 3707. Construction and rehabilitation; trust fund.  
Sec. 3708. Satisfaction of claims.  
Sec. 3709. Environmental compliance.  
Sec. 3710. Miscellaneous provisions.  
Sec. 3711. Effective date.

October 30, 1992

3812 BUFFALO BILL DAM AND RESERVOIR

TITLE XXXVIII—SAN FRANCISCO WATER RECLAMATION  
AND REUSE DEMONSTRATION PROJECT ACT

TITLE XXXIX—SIPHON REPAIR AND REPLACEMENT

TITLE XL—NATIONAL HISTORIC PRESERVATION  
ACT AMENDMENTS

- Sec. 4001. Short title.
- Sec. 4002. Policy.
- Sec. 4003. Review of threats to properties.
- Sec. 4004. State historic preservation programs.
- Sec. 4005. Certification of local governments.
- Sec. 4006. Tribal historic preservation programs.
- Sec. 4007. Matching grants.
- Sec. 4008. Education and training.
- Sec. 4009. Requirements for awarding of grants.
- Sec. 4010. Apportionment of grant funds.
- Sec. 4011. Extension of authorization for historic preservation fund.
- Sec. 4012. Federal agency historic preservation programs.
- Sec. 4013. Lease or exchange of Federal housing properties.
- Sec. 4014. Professional standards.
- Sec. 4015. Interstate and international traffic in antiquities.
- Sec. 4016. Membership of advisory council on historic preservation.
- Sec. 4017. Authorization of appropriations for advisory council on historic preservation.
- Sec. 4018. Advisory council regulations.
- Sec. 4019. Definitions.
- Sec. 4020. Access to information.
- Sec. 4021. Recommendations.
- Sec. 4022. National center for preservation technology and training.
- Sec. 4023. Requirement for specific authorization for projects under the Historic Sites, Buildings, and Antiquities Act.

TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

**Sec. 101. [Additional authorization of appropriations.]**—Title I of Public Law 97-293 (96 Stat. 1261) is amended as follows: (a) In the second sentence of section 101, by striking "replacing the existing Shoshone Powerplant," and inserting "constructing power generating facilities with a total installed capacity of 25.5 megawatts,".

(b) In section 102, amend the heading to read "recreational facilities, conservation, and fish and wildlife", and add at the end "The construction of

October 30, 1992

CENTRAL UTAH PROJECT

3813

recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act."

(c) In section 106(a), strike "for construction of the Buffalo Bill Dam and Reservoir modifications the sum of \$106,700,000 (October 1982 price levels)" and insert "for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of \$80,000,000 (October 1988 price levels)", and strike "modifications" and all that follows and insert "modifications." in lieu thereof.

(d) There are authorized to be appropriated such sums as may be required due to increased costs of construction attributable to delays in enactment of any additional authorization of appropriations for the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities: *Provided*, That such additional sums shall be nonreimbursable and nonreturnable under the Federal reclamation laws. (106 Stat. 4605)

EXPLANATORY NOTE

**References in the Text.** The Act of October 12, 1982, Public Law 97-293 (96 Stat. 1261) referenced in subsection 101(a) appears in Volume IV at page 3332 and as it is subsequently amended and annotated in Supplement II at page S1089. The Federal Water Project Recreation Act, Act of July 9, 1965 (Public Law 89-72, 79 Stat. 213) referenced in subsection 101(b) appears in Volume III at page 1820. Amendments and annotations appear in Volume IV at page 2838, Supplement I at page S389, and Supplement II at page S921.

**TITLE II—CENTRAL UTAH PROJECT CONSTRUCTION**

**Sec. 200. [Short title and definitions for titles II- VI.]—(a) [Short title.]—**Titles II through VI of this Act may be cited as the "Central Utah Project Completion Act".

**(b) [Definitions.]—**For the purposes of titles II- VI of this Act: (1) The term "Bureau" means the Bureau of Reclamation of the Department of the Interior.

(2) The term "Commission" means the Utah Reclamation Mitigation and Conservation Commission established by section 301 of this Act.

(3) The term "conservation measure(s)" means actions taken to improve the efficiency of the storage, conveyance, distribution, or use of water, exclusive of dams, reservoirs, or wells.

(4) The term "1988 Definite Plan Report" means the May 1988 Draft Supplement to the Definite Plan Report for the Bonneville Unit of the Central Utah Project.

(5) The term "District" means the Central Utah Water Conservancy District.

(6) The term "fish and wildlife resources" means all birds, fishes, mammals, and all other classes of wild animals and all types of habitat upon which such fish and wildlife depend.

(7) The term "Interagency Biological Assessment Team" means the team comprised of representatives from the United States Fish and Wildlife Service, the United States Forest Service, the Bureau of Reclamation, the Utah Division of Wildlife Resources, and the District.

(8) The term "administrative expenses", as used in section 301(i) of this Act, means all expenses necessary for the Commission to administer its duties other than the cost of the contracts or other transactions provided for in section 301(f)(3) for the implementation by public natural resource management agencies of the mitigation and conservation projects and features authorized in this Act. Such administrative expenses include but are not limited to the costs associated with the Commission's planning, reporting, and public involvement activities, as well as the salaries, travel expenses, office equipment, and other such general administrative expenses authorized in this Act.

(9) The term "petitioner(s)" means any person or entity that petitions the District for an allotment of water pursuant to the Utah Water Conservancy Act, Utah Code Ann. Sec. 17A-2-1401 et. seq.

(10) The term "project" means the Central Utah Project.

(11) The term "public involvement" means to request comment on the scope of and, subsequently, on drafts of proposed actions or plans, affirmatively soliciting comments, in writing or at public hearings, from those persons, agencies, or organizations who may be interested or affected.

(12) The term "Secretary" means the Secretary of the Interior.

(13) The term "section 8" means section 8 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 620g).

(14) The term "State" means the State of Utah, its political subdivisions, or its designee.

(15) The term "Stream Flow Agreement" means the agreement entered into by the United States through the Secretary of the Interior, the State of Utah, and the Central Utah Water Conservancy District, dated February 27, 1980, as modified by the amendment to such agreement, dated September 13, 1990. (106 Stat. 4605)

EXPLANATORY NOTE

**References in the Text.** The Act of April 11, 1956 (ch. 203, 70 Stat. 105) commonly known as the "Colorado River Storage Project" referenced above, appears in Volume I at page 1248. Amendments and annotations appear in Volume IV at pages 2416 and 2871, Supplement I at S247, and Supplement II at page S873.

October 30, 1992

CENTRAL UTAH PROJECT

3815

**Sec. 201. [Authorization of additional amounts for the Colorado River Storage Project.]—(a)(1) [Increase in CRSP authorization.]**—In order to provide for the completion of the Central Utah Project and other features described in this Act, the amount which section 12 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 620k), authorizes to be appropriated, which was increased by the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. § 620k note) and the Act of October 31, 1988 (102 Stat. 2826), is hereby further increased by \$924,206,000 (January 1991) 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: *Provided, however,* That of the amounts authorized to be appropriated by this section, the Secretary is not authorized to obligate or expend amounts in excess of \$214,352,000 for the features identified in the Report of the Senate Committee on Energy and Natural Resources accompanying the bill H.R. 429. This additional sum shall be available solely for design, engineering, and construction of the facilities identified in title II of this Act and for the planning and implementation of the fish and wildlife and recreation mitigation and conservation projects and studies authorized in titles III and IV of this Act, and for the Ute Indian Settlement authorized in title V of this Act. (106 Stat. 4606)

EXPLANATORY NOTE

**References in the Text.** The Act of August 10, 1972 (Public Law 92-370, 86 Stat. 525) referenced above and following appears in Volume IV at page 2657. The Act of October 31, 1988 (Public Law 100-563, 102 Stat. 2826) referenced above and following appears in Volume V at page 3619.

**(2) [Application of Inspector General recommendations.]**—Notwithstanding any other provision of law to the contrary, the Secretary shall implement all the recommendations contained in the report entitled "Review of the Financial Management of the Colorado River Storage Project, Bureau of Reclamation (Report No. 88-45, February 1988)", prepared by the Inspector General of the Department of the Interior, with respect to the funds authorized to be appropriated in this section.

**(b) [Utah reclamation projects and features not to be funded.]**—Notwithstanding the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 105), the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. § 620k note), the Act of October 19, 1980 (94 Stat. 2239; 43 U.S.C. § 620), and the Act of October 31, 1988 (102 Stat. 2826), funds may not be made available, obligated, or expended for the following Utah reclamation projects and features:

- (1) Fish and wildlife features:
  - (A) The dam in Bjorkman Hollow.
  - (B) The Deep Creek pumping plant.

October 30, 1992

3816

CENTRAL UTAH PROJECT

- (C) The North Fork pumping plant.
- (2) Water development projects and features:
  - (A) Mosida pumping plant, canals, and laterals.
  - (B) Draining of Benjamin Slough.
  - (C) Diking of Goshen or Provo Bays in Utah Lake.
  - (D) Ute Indian Unit.
  - (E) Leland Bench development.
  - (F) All features of the Bonneville Unit, Central Utah Project not proposed and described in the 1988 Definite Plan Report. Counties in which the projects and features described in this subsection were proposed to be located may participate in the local development projects provided for in section 206.

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the 94 Stat. 2239) referenced above appear in Act of October 19, 1980 (Public Law 96-470, Volume IV at page 3221.

**(c) [Termination of authorization of appropriations.]**—Notwithstanding any provision of the Act of April 11, 1956 (70 Stat.110; 43 C. § 620k), the Act of September 2, 1964 (78 Stat. 852), the Act of September 30, 1968 (82 Stat. 885), the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. § 620k note), and the Act of October 31, 1988 (102 Stat. 2826) to the contrary, the authorization of appropriations for construction of any Colorado River Storage Project participating project located in the State of Utah shall terminate five years after the date of enactment of this Act unless: (1) the Secretary executes a cost-sharing agreement with the District for construction of such project, and (2) the Secretary has requested, or the Congress has appropriated, construction funds for such project.

EXPLANATORY NOTE

**References in the Text.** The Act of September 2, 1964 (Public Law 88-568, 78 Stat. 852) referenced above appears in Volume III at page 1774. Annotations appear in Supplement I at page S357. The Act of September 30, 1968 (Public Law 90-537, 82 Stat. 885) referenced above appears in Volume IV at page 2395. Amendments and annotations of the 1968 Act appear in Supplement II at page S995. The Act of August 10, 1972 (86 Stat. 525) appears in Volume IV at page 2658. The Act of October 31, 1988 (102 Stat. 2826) appears in Volume V at page 3619.

**(d) [Use of appropriated funds.]**—Funds authorized pursuant to this Act shall be appropriated to the Secretary, and such appropriations shall be made immediately available in their entirety to the District and the Commission as provided for pursuant to the provisions of this Act.

October 30, 1992

CENTRAL UTAH PROJECT

3817

(e) **[Secretarial responsibility.]**—The Secretary is responsible for carrying out the responsibilities as specifically identified in this Act and may not delegate his responsibilities under this Act to the Bureau of Reclamation. The District at its sole option may use the services of the Bureau of Reclamation on any project features. (106 Stat. 4606-4608 Stet.)

**Sec. 202. [Bonneville Unit water development—Funding—Strawberry Water Users Association.]**—(a) Of the amounts authorized to be appropriated in section 201, the following amounts shall be available only for the following features of the Bonneville Unit of the Central Utah Project:

(1) **[Irrigation and drainage system—Authorization limited—Contracts required—Program guidelines.]**—(A) \$150,000,000 for the construction of an enclosed pipeline primary water conveyance system from Spanish Fork Canyon to Sevier Bridge Reservoir for the purpose of supplying new and supplemental irrigation water supplies to Utah, Juab, Millard, Sanpete, Sevier, Garfield, and Piute Counties. Construction of the facilities specified in the previous sentence shall be undertaken by the District as specified in subparagraph (D) of this paragraph. No funds are authorized to be appropriated for construction of the facilities identified in this paragraph, except as provided for in subparagraph (D) of this paragraph.

(B) The authorization to construct the features provided for in subparagraph (A) shall expire if no federally appropriated funds to construct such features have been obligated or expended by the District in accordance with this Act, unless the Secretary determines the District has complied with sections 202, 204, and 205, within five years from the date of its enactment, or such longer time as necessitated for—

(i) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act (16 U.S.C. § 1533 et seq.) for any species that is or may be listed as threatened or endangered under such Act: *Provided, however,* That such extension of time for the expiration of authorization shall not exceed twelve months beyond the five-year period provided in subparagraph (B) of this paragraph;

(ii) judicial review of a completed final environmental impact statement for such features if such review is initiated by parties other than the District, the State, or petitioners of project water; or

(iii) a judicial challenge of the Secretary's failure to make a determination of compliance under this subparagraph.

*Provided, however,* That in the event that construction is not initiated on the features provided for in subparagraph (A), \$125,000,000 shall remain authorized pursuant to the provisions of this Act applicable to subparagraph (A) for the construction of alternate features to deliver

October 30, 1992

3818

CENTRAL UTAH PROJECT

irrigation water to lands in the Utah Lake drainage basin, exclusive of the features identified in section 201(b). (106 Stat. 4608)

EXPLANATORY NOTE

**References in the Text.** The Endangered Species Act, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884) referenced above appears in Volume IV at page 2782.

**(C) [Requirement for binding contracts.]**—Amounts authorized to carry out subparagraph (A) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase for the purpose of agricultural irrigation of at least 90 percent of the irrigation water to be delivered from the features of the Central Utah Project described in subparagraph (A) have been executed.

**(D)** In lieu of construction by the Secretary, the Central Utah Project and features specified in section 202(a)(l) shall be constructed by the District under the program guidelines authorized by Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. § 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 202(a)(l). Any such feature shall be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in section 202(a)(l). (106 Stat. 4608)

EXPLANATORY NOTE

**References in the Text.** The Drainage and Minor Construction Act, Act of June 13, 1956 (ch. 382, 70 Stat. 274) referenced above appears in Volume II at page 1269. Annotations of the 1956 Act appear in Supplement I at page S260.

**(2) [Conjunctive use of surface and ground water.]**—\$10,000,000 for a feasibility study and development, with public involvement, by the Utah Division of Water Resources of systems to allow ground water recharge, management, and the conjunctive use of surface water resources with ground water resources in Salt Lake, Utah, Davis, Wasatch, and Weber Counties, Utah.

**(3) [Wasatch County Water Efficiency Project—Federal funding—Non-Federal contributions—National Environmental Policy Act compliance.]**—(A) \$500,000 for the District to conduct, within two years

October 30, 1992

CENTRAL UTAH PROJECT

3819

from the date of enactment of this Act, a feasibility study with public involvement, of efficiency improvements in the management, delivery and treatment of water in Wasatch County, without interference with downstream water rights. Such feasibility study shall be developed after consultation with Wasatch County and the Commission, or the Utah State Division of Wildlife Resources if the Commission has not been established, and shall identify the features of the Wasatch County Water Efficiency Project.

(B) \$10,000,000 for construction of the Wasatch County Water Efficiency Project, in addition to funds authorized in section 207(e)(2) for related purposes.

(C) The feasibility study and the Project construction authorization shall be subject to the non-Federal contribution requirements of section 204.

(D) The project construction authorization provided in subparagraph (B) shall expire if no federally appropriated funds to construct such features have been obligated or expended by the District in accordance with this Act within five years from the date of completion of feasibility studies, or such longer times as necessitated for—

(i) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) for any species that is or may be listed as threatened or endangered under such Act, except that such extension of time for the expiration of authorization shall not exceed twelve months beyond the five-year period provided in this subparagraph; or

(ii) judicial review of environmental studies prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) if such review was initiated by parties other than the District, the State, or petitioners of project water. (106 Stat. 4608)

EXPLANATORY NOTE

<b>References in the Text.</b> The Endangered Species Act, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884) referenced above appears in Volume IV at page 2782.	The National Environmental Policy Act of 1969, Act of January 1, 1970 (Public Law 91-190, 83 Stat.852) referenced above appears in Volume IV at page 2492.
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(E) Amounts authorized to carry out subparagraph (B) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase of at least 90 percent of the supplemental irrigation project water to be delivered from the features constructed under subparagraph (B) have been executed.

(F) In lieu of construction by the Secretary, the Central Utah Project and features specified in section 202(a)(3) shall be constructed by the District

under the program guidelines authorized by the Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274; 43 U.S.C. § 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 202(a)(3). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in section 202(a)(3).

**(4) [Utah Lake salinity control.]**—\$1,000,000 for the District to conduct, with public involvement, a feasibility study to reduce the salinity of Utah Lake.

**(5) [Provo River studies—Hydrologic—Feasibility.]**—(A) \$2,000,000 for the District to conduct, with public involvement:

(i) a hydrologic study that includes a hydrologic model analysis of the Provo River Basin with all tributaries, water imports and exports, and diversions, an analysis of expected flows and storage under varying water conditions, and a comparison of steady State conditions with proposed demands being placed on the river and affected water resources, including historical diversions, decrees, and water rights, and

(ii) a feasibility study of direct delivery of Colorado River Basin water from the Strawberry Reservoir or elsewhere in the Strawberry Collection System to the Provo River Basin, including the Wallsburg Tunnel and other possible importation or exchange options. The studies shall also evaluate the potential for changes in existing importation patterns and quantities of water from the Weber and Duchesne River Basins, and shall describe the economic and environmental consequences of each alternative identified. In addition to funds appropriated after the enactment of this Act, the Secretary is authorized to utilize section 8 funds which may be available from fiscal year 1993 appropriations for the Central Utah Project for the purposes of carrying out the studies described in this paragraph.

(B) The cost of the studies provided for in subparagraph (A) shall be treated as an expense under section 8: *Provided, however,* That the cost of such study shall be reallocated proportionate with project purposes in the event any conveyance alternative is subsequently authorized and constructed. Within its available funds, the United States Geological Survey is directed to consult with the District in the preparation of the study identified in paragraph (5)(A)(i).

**(6) [Completion of Diamond Fork System—Program guidelines.]**—(A) Of the amounts authorized to be appropriated under section 201,

October 30, 1992

CENTRAL UTAH PROJECT

3821

\$69,000,000 shall be available to complete construction of the Diamond Fork System.

(B) In lieu of construction by the Secretary, the facilities specified in paragraph (A) shall be constructed by the District under the program guidelines authorized by Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat, 274, 43 U.S.C. § 505). The sixty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 202(a)(6). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in subparagraph (A) of this paragraph.

**(b) [Strawberry Water Users Association—Use of Federal lands—Federal share of Hatchtown Dam costs.]—**

(1) In exchange for, and as a precondition to approval of the Strawberry Water Users Association's petition for Bonneville Unit water, the Secretary, after consultation with the Secretary of Agriculture, shall impose conditions on such approval so as to ensure that the Strawberry Water Users Association shall manage and develop the lands referred to in subparagraph 4(e)(1)(A) of the Act of October 31, 1988 (102 Stat. 2826, 2828) in a manner compatible with the management and improvement of adjacent Federal lands for wildlife purposes, natural values, and recreation. (106 Stat. 4608)

(2) The Secretary of Agriculture and the Secretary shall not permit commercial or other development of Federal lands within sections 2 and 13, T. 3 S., R. 12 W., and sections 7 and 8, T. 3 S., R. 11 W., Uintah Special Meridian. Such Federal lands shall be rehabilitated pursuant to subsection 4(f) of the Act of October 31, 1988 (102 Stat. 2826, 2828) and hereafter managed and improved for wildlife purposes, natural values, and recreation consistent with the Uinta National Forest Land and Natural Resource Management Plan. This restriction shall not apply to the 95 acres referred to in the first sentence of subparagraph 4(e)(1)(A) of the Act of October 31, 1988 (102 Stat. 2826, 2828), valid existing rights, or to uses of such Federal lands by the Secretary of Agriculture or the Secretary for public purposes.

(c) The Secretary is authorized to utilize any unexpended budget authority provided in title II and such funds as may be provided by the Commission for fish and wildlife purposes, to provide 65 percent Federal share pursuant to section 204, of engineering, design, and construction of Hatchtown dam in Garfield County and associated facilities to deliver supplemental project water from Hatchtown dam. The District shall establish a viable minimum conservation pool in Hatchtown dam and shall ensure maintenance of viable

instream flows in the Sevier River between Hatchtown dam and the Piute dam with the concurrence of the Commission and in consultation with the Division of Wildlife Resources of the State of Utah. The District shall comply with the provisions of section 202(a)(1) with respect to the features to be provided for in this subsection. (106 Stat. 4608-4612)

**Sec. 203. [~~Uinta Basin Replacement Project—Funding—Authorization limited—Contracts required—Non-Federal option—Water rights—Uintah Indian Irrigation Project—Brush Creek and Jensen Unit.~~—(a) [In general.]**—Of the amounts authorized to be appropriated by section 201, \$30,538,000 shall be available only to increase efficiency, enhance beneficial uses, and achieve greater water conservation within the Uinta Basin, as follows:

- (1) \$13,582,000 for the construction of the Pigeon Water Reservoir, together with an enclosed pipeline conveyance system to divert water from Lake Fork River to Pigeon Water Reservoir and Sandwash Reservoir.
- (2) \$2,987,000 for the construction of McGuire Draw Reservoir.
- (3) \$7,669,000 for the construction of Clay Basin Reservoir.
- (4) \$4,000,000 for the rehabilitation of Farnsworth Canal.
- (5) \$2,300,000 for the construction of permanent diversion facilities identified by the Commission on the Duchesne and Strawberry Rivers, the designs of which shall be approved by the Federal and State fish and wildlife agencies. The amount identified in paragraph (5) shall be treated as an expense under section 8.

**(b) [Expiration of authorization—Feasibility studies—Biological opinion required—NEPA compliance.]**—The authorization to construct any of the features provided for in paragraphs (1) through (5) of subsection (a)

(1) shall expire if no federally appropriated funds for such features have been obligated or expended by the District in accordance with this Act within five years from the date of completion of feasibility studies, or such longer time as necessitated for—

(A) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act (16 U.S.C. § 1533 et seq.) for any species that is or may be listed as threatened or endangered under such Act: *Provided, however,* that such extension of time for the expiration of authorization shall not exceed 12 months beyond the five-year period provided in this paragraph; or

(B) judicial review of environmental studies prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) if such review was initiated by parties other than the District, the State, or petitioners of project water; and

(2) shall expire if the Secretary determines that such feature is not feasible.

**(c) [Requirement for binding contracts.]**—Amounts authorized to carry out subsection (a), paragraphs (1) through (4) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase of at least 90 percent of the supplemental irrigation water to be delivered from the features of the Central Utah Project described in subsection (a), paragraphs (1) through (4) have been executed. (106 Stat. 4612)

**(d) [Non-Federal option.]**—In lieu of construction by the Secretary, the features described in subsection (a), paragraphs (1) through (5) shall be constructed by the District under the program guidelines authorized by the Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. § 505). Thirty-day congressional notification of the Secretary's intent to use the Drainage Facilities and Minor Construction Act program is hereby waived with respect to construction of the features authorized in section 203(a). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements previously entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in subsection (a) of this section.

**(e) [Water rights.]**—To make water rights available for any of the features constructed as authorized in this section, the Bureau shall convey to the District in accordance with State law the water rights evidenced by Water Right No. 43-3825 (Application No. A36642) and Water Right No. 43-3827 (Application No. A36644).

**(f) [Uintah Indian Irrigation Project—Contract required—Title to rights-of-way and facilities—Treatment of funds related to the project.]**—

(1) Notwithstanding any other provision of law, the Secretary is authorized and directed to enter into a contract or cooperative agreement with, or make a grant to the Uintah Indian Irrigation Project Operation and Maintenance Company, or any other organization representing the water users within the Uintah Indian Irrigation Project area, to enable such organization to

(A) administer the Uintah Indian Irrigation Project, or part thereof, and

(B) operate, maintain, rehabilitate, and construct all or some of the irrigation project facilities using the same administrative authority and management procedures as used by water user organizations formed under State laws who administer, operate, and maintain irrigation projects.

(2) Title to Uintah Indian Irrigation Project rights-of-way and facilities shall remain in the United States. The Secretary shall retain any trust responsibilities to the Uintah Indian Irrigation Project.

(3) Notwithstanding any other provision of law, the Secretary shall use funds received from assessments, carriage agreements, leases, and all other

additional sources related to the Uintah Indian Irrigation Project exclusively for Uintah Indian Irrigation Project administration, operation, maintenance, rehabilitation, and construction where appropriate. Upon receipt, the Secretary shall deposit such funds in an account in the Treasury of the United States. Amounts in the account not currently needed shall earn interest at the rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding obligations of the United States with remaining periods to maturity comparable to the period for which such funds are not currently needed. Amounts in the account shall be available without further authorization or appropriation by Congress. Such amounts shall be treated as private funds to be held in trust for landowners of the irrigation project and shall not be treated as public or appropriated funds.

(4) All noncontract costs, direct and indirect, required to administer the Uintah Indian Irrigation Project shall be nonreimbursable and paid for by the Secretary as part of his trust responsibilities, beginning on the date of enactment of this Act. Such costs shall include (but not be limited to) the noncontract cost positions of project manager or engineer and two support staff. Such costs shall be added to the funding of the Uintah and Ouray Agency of the Bureau of Indian Affairs as a line item.

(5) The Secretary is authorized to sell, lease, or otherwise make available the use of irrigation project equipment to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.

(6) The Secretary is authorized to lease or otherwise make available the use of irrigation project facilities to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof. (106 Stat. 4612)

**(g) [Brush Creek and Jensen Unit—Contract required—Red Fleet recreation facilities.]—**

(1) The Secretary is authorized to enter into Amendatory Contract Number 6-05-0-00143, as last revised on September 19, 1988, between the United States and the Uintah Water Conservancy District, which provides, among other things, for part of the municipal and industrial water obligation now the responsibility of the Uintah Water Conservancy District to be retained by the United States with a corresponding part of the water supply to be controlled and marketed by the States. Such water shall be marketed and used in conformance with State law.

(2) The Secretary, through the Bureau, shall—(A) establish a conservation pool of 4,000 acre-feet in Red Fleet Reservoir for the purpose of enhancing associated fishery and recreational opportunities and for such other purposes as may be recommended by the Commission in consultation with

October 30, 1992

CENTRAL UTAH PROJECT

3825

the Utah Division of Wildlife Resources, United States Fish and Wildlife Service, and the Utah Division of Parks and Recreation.

(B) enter into an agreement with the Utah Division of Parks and Recreation for the management and operation of Red Fleet recreational facilities. (106 Stat. 4612-4614)

**Sec. 204. [Non-Federal contribution.]**—The non-Federal share of the cost for the design, engineering, and construction of the Central Utah Project features authorized by sections 202 and 203 shall be 35 percent of the total reimbursable costs and shall be paid concurrently with the Federal share, except that for the facilities specified in 202(a)(6), the cost-share shall be 35 percent of the costs allocated to irrigation beyond the ability of irrigators to repay. The non-Federal share of the cost for studies required by sections 202 and 203, other than the study required by section 202(a)(5), shall be 50 percent and shall be paid concurrently with the Federal share. Within one hundred and twenty days of enactment of this Act, the Secretary shall execute a cost sharing agreement which binds the District to provide annually such sums as may be required to satisfy the non-Federal share of the separate features authorized and approved for construction pursuant to this Act. The Secretary is not authorized to broaden the scope of the cost sharing agreement beyond assuring that the non-Federal interests will satisfy the cost sharing provisions as set forth in this section. Any feature to which this section applies shall not be initiated until after the non-Federal interests enter into a cost sharing agreement with the Secretary to provide the share required by this section. The District may commence any study authorized herein prior to entering into a cost sharing agreement, and upon execution of a cost sharing agreement the Secretary shall reimburse the District an amount equal to the Federal share of the funds expended by the District. (106 Stat. 4614)

**Sec. 205. [Definite Plan Report and environmental compliance.]**—  
**(a) [Definite Plan Report and feasibility studies.]**—Except for amounts required for compliance with applicable environmental laws and the purposes of this subsection, federally appropriated funds may not be obligated or expended by the District for construction of the features authorized in section 202(a)(1) or 203 until—

(1) the District completes—

(A) a Definite Plan Report for the system authorized in section 202(a)(1),

or

(B) an analysis to determine the feasibility of the separate features described in section 203(a), paragraphs (1) through (4), or subsection (f);

(2) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) have been satisfied with respect to the particular system; and

(3) a plan has been developed with and approved by the United States Fish and Wildlife Service to prevent any harmful contamination of waters

due to concentrations of selenium or other such toxicants, if the Service determines that development of the particular system may result in such contamination.

**(b) [Compliance with environmental laws and the terms of this Act—Contract required.]**—Notwithstanding any other provision of this Act, Federal funds authorized under this title may not be provided to the District until the District enters into a binding agreement with the Secretary to be considered a "Federal Agency" for purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of such funds, and to comply with this Act. The Secretary shall execute such binding agreement within one hundred and twenty days of enactment of this Act.

**(c) [Initiation of repayment.]**—For purposes of repayment of costs obligated and expended prior to the date of enactment of this Act, the Definite Plan Report shall be considered as being filed and approved by the Secretary, and repayment of such costs shall be initiated by the Secretary of Energy at the earliest possible date. All the costs allocated to irrigation and associated with construction of the Strawberry Collection System, a component of the Bonneville Unit, obligated prior to the date of enactment of this Act shall be included by the Secretary of Energy in the costs specified in this subsection.

**(d) [Funding.]**—Of the amounts authorized in section 201, the Secretary is directed to make sums available to the District as required by the District, for the completion of the plans, studies, and analyses required by this section pursuant to the cost sharing provisions of section 204.

**(e) [Content and approval of the Definite Plan Report.]**—The Definite Plan Report required under this section shall include economic analyses consistent with the Economic and Environmental and Guidelines for Water and Related Land Resources Implementation Studies (March 10, 1983). The Secretary may withhold approval of the Definite Plan Report only on the basis of the inadequacy of the document, and specifically not on the basis of the findings of its economic analyses. (106 Stat. 4616)

**Sec. 206. [Local development in lieu of irrigation and drainage.]**—

**(a) [Optional rebate to counties.]**—

(1) After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date.

(2) Counties eligible to receive the rebate provided for in paragraph (1) include any county within the District, except for Salt Lake County and Utah County, in which the construction of Central Utah Project water storage or delivery features authorized in this Act has not commenced and—

October 30, 1992

CENTRAL UTAH PROJECT

3827

(A) in which there are no binding contracts as required under section 202(1)(C); or

(B) in which the authorization for the project or feature was repealed pursuant to section 201(b) or expired pursuant to section 202(1)(B) of this Act.

**(b) [Local development option.]**—(1) Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the rebate received by such county, shall constitute 65 percent of the cost of implementation of measures identified in paragraph (2).

(2)(A) The grant provided for in this subsection shall be available for the following purposes:

(i) Potable water distribution and treatment.

(ii) Wastewater collection and treatment.

(iii) Agricultural water management.

(iv) Other public infrastructure improvements as may be approved by the Secretary.

(B) Funds made available under this subsection may not be used for—

(i) draining of wetlands;

(ii) dredging of natural water courses; and

(iii) planning or constructing water impoundments of greater than five thousand acre-feet, except for the proposed Town Dam on the Sevier River in southern Garfield County, Utah.

(C) All Federal environmental laws shall be applicable to any projects or features developed pursuant to this section.

(3) Of the amounts authorized to be appropriated by section 201, not more than \$40,000,000 may be available for the purposes of this subsection. (106 Stat. 4616)

**Sec. 207. [Water management improvement.]—(a) [Purposes.]**—The purposes of this section are, through such means as are cost-effective and environmentally sound, to—

(1) encourage the conservation and wise use of water;

(2) reduce the probability and duration of periods necessitating extraordinary curtailment of water use;

(3) achieve beneficial reductions in water use and system costs;

(4) prevent or eliminate unnecessary depletion of waters in order to assist in the improvement and maintenance of water quantity, quality, and streamflow conditions necessary to augment water supplies and support fish, wildlife, recreation, and other public benefits;

(5) make prudent and efficient use of currently available water prior to any importation of Bear River water into Salt Lake County, Utah; and

(6) provide a systematic approach to the accomplishment of these purposes and an objective basis for measuring their achievement.

**(b) [Water Management Improvement Plan.]**—The District, after consultation with the State and with each petitioner of project water, shall prepare and maintain a water management improvement plan. The first plan shall be submitted to the Secretary by January 1, 1995. Every three years thereafter the District shall prepare and submit a supplement to this plan. The Secretary shall either approve or disapprove such plan or supplement thereto within six months of its submission.

**(1) [Elements.]**—The plan shall include the following elements:

(A) A water conservation goal, consisting of the greater of the following two amounts for each petitioner of project water:

- (i) 25 percent of each petitioner's projected increase in annual water deliveries between the years 1990 and 2000, or such later ten-year period as the District may find useful for planning purposes; or
- (ii) the amount by which unaccounted for water or, in the case of irrigation entities, transport losses, exceeds 10 percent of recorded annual water deliveries.

The minimum goal for the District shall be thirty thousand acre-feet per year. In the event that the pipeline conveyance system described in section 202(a)(1)(A) is not constructed due to expiration of the authorization pursuant to section 202(a)(1)(B), the minimum goal for the District shall be reduced by five thousand acre-feet per year. In the event that the Wasatch County Water Efficiency Project authorized in section 202(a)(3)(B) is not constructed due to expiration of the authorization pursuant to section 202(a)(3)(D), the minimum goal for the District shall be reduced by five thousand acre-feet per year. In the event the water supply which would have been supplied by the pipeline conveyance system described in section 202(a)(1)(A) is made available and delivered to municipal and industrial or agricultural petitioners in Salt Lake, Utah or Juab counties subsequent to the expiration of the authorization pursuant to section 202(a)(1)(B), the minimum goal for the District shall increase five thousand acre-feet per year. In no event shall the minimum goal for the District be less than twenty thousand acre-feet per year. (106 Stat. 4616)

(B) A water management improvement inventory, containing—

- (i) conservation measures to improve the efficiency of the storage, conveyance, distribution, and use of water in a manner that contributes to the accomplishment of the purposes of this section, exclusive of any measures promulgated pursuant to subsection (f)(2) (A) through (D);
- (ii) the estimated economic and financial costs of each such measure;
- (iii) the estimated water yield of each such measure; and

October 30, 1992

CENTRAL UTAH PROJECT

3829

(iv) the socioeconomic and environmental effects of each such measure.

(C) A comparative analysis of each cost-effective and environmentally acceptable measure.

(D) A schedule of implementation for the following five years.

(E) An assessment of the performance of previously implemented conservation measures, if any. Each plan or plan supplement shall be technically sound, internally consistent and supported by objective analysis.

Not less than ninety days prior to its transmittal to the Secretary, the plan, or plan supplement, together with all supporting documentation demonstrating compliance with this section, shall be made available by the District for public review, hearing, and comment. All significant comments, and the Districts response thereto, shall accompany the plan transmitted to the Secretary.

**(2) [Evaluation of conservation measures.]**—(A) Any conservation measure proposed to the District by the Executive Director of the Utah Department of Natural Resources shall be added to the water management improvement inventory and evaluated by the District. Any conservation measure, up to a cumulative five in number within any three-year period, submitted by nonprofit sportsmen or environmental organizations shall be added to the water management improvement inventory and evaluated by the District.

(B) Each conservation measure that is found to be cost-effective, without significant adverse impact to the financial integrity of the District or a petitioner of project water, environmentally acceptable and for which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) have been satisfied, and in the public interest shall be deemed to constitute the "active inventory". For purposes of this section, the determination of benefits shall take into account:

(i) the value of saved water, to be determined, in the case of municipal water, on the basis of the project municipal and industrial repayment obligation of the District, but in no case less than \$200 per acre-foot, and, in the case of irrigation water, on the basis of operation, maintenance, and replacement costs plus the "full cost" rate for irrigation computed in accordance with section 302(3) of the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. § 390bb), but in no case less than \$50 per acre-foot,

(ii) the reduced cost of wastewater treatment, if any;

(iii) net additional hydroelectric power generation, if any, valued at avoided cost;

(iv) net savings in operation, maintenance, and replacement costs; and

(v) net savings in on-farm costs. (106 Stat. 4616)

October 30, 1992

3830

CENTRAL UTAH PROJECT

EXPLANATORY NOTE

**Reference in the Text.** The Act of at page 3332 and as it is subsequently October 12, 1982, Public Law 97-293 (96 Stat. amended and annotated in Supplement II at 1261) referenced above appears in Volume IV page S1092.

**(3) [Implementation.]**—The District, and each petitioner of project water, as appropriate, shall implement and maintain, consistent with State law, conservation measures placed in the active inventory to the maximum practical extent necessary to achieve 50 percent of the water conservation goal within seven years after submission of the initial plan and 100 percent of the water conservation goal within fifteen years after submission of the initial plan. Priority shall be given to implementation of the most cost-effective measures that are—

(A) found to reduce consumptive use of water without significant adverse impact to the financial integrity of the District or the petitioner of project water;

(B) environmentally acceptable and for which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) has been satisfied; and

(C) found to be in the public interest.

**(4) [Use of saved water.]**—All water saved by any conservation measure implemented by the District or a petitioner of project water under subsection (b)(3) may be retained by the District or the petitioner of project water which saved such water for its own use or disposition. The specific amounts of water saved by any conservation measure implemented under subsection (b)(3) shall be based upon the determination of yield under paragraph (b)(1)(B)(iii), and as may be confirmed or modified by assessment pursuant to paragraph (b)(1)(E). Each petitioner of project water may make available to the District water in an amount equivalent to the water saved, which the District may make available to the Secretary for instream flows in addition to the stream flow requirements established by section 303. Such instream flows shall be released from project facilities, subject to space available in project conveyance systems, to at least one watercourse in the Bonneville and Uinta River Basins, respectively, to be designated by the United States Fish and Wildlife Service as recommended by the Interagency Biological Assessment Team. Such flows shall be protected against appropriation in the same manner as the minimum streamflow requirements established by section 303. The Secretary shall reduce the annual contractual repayment obligation of the District equal to the project rate for delivered water, including operation and maintenance expenses, for water saved for instream flows pursuant to this subsection. The District shall credit or rebate to each petitioner of project water its proportionate share of the

District's repayment savings for reductions in deliveries of project water as a result of this subsection.

**(5) [Status report on the planning process.]**—Prior to January 1, 1994, the District shall establish a continuous process for the identification, evaluation, and implementation of water conservation measures to achieve the purposes of this section, and submit a report thereon to the Secretary. The report shall include a description of this process, including its financial resources, technical support, public involvement, and identification of staff responsible for its development and implementation. (106 Stat. 4616)

**(c) [Water Conservation Pricing Study.]**—(1) Within three years from the date of enactment of this Act, the District, after consultation with the State and each petitioner of project water, shall prepare and transmit to the Secretary a study of wholesale and retail pricing to encourage water conservation as described in this subsection, together with its conclusions and recommendations.

(2) The purposes of this study are—

(A) to design and evaluate potential rate designs and pricing policies for water supply and wastewater treatment within the District boundary;

(B) to estimate demand elasticity for each of the principal categories of end use of water within the District boundary;

(C) to quantify monthly water savings estimated to result from the various designs and policies to be evaluated; and

(D) to identify a water pricing system that reflects the incremental scarcity value of water and rewards effective water conservation programs.

(3) Pricing policies to be evaluated in the study shall include but not be limited to the following, alone and in combination:

(A) recovery of all costs, including a reasonable return on investment, through water and wastewater service charges;

(B) seasonal rate differentials;

(C) drought year surcharges;

(D) increasing block rate schedules;

(E) marginal cost pricing;

(F) rates accounting for differences in costs based upon point of delivery; and

(G) rates based on the effect of phasing out the collection of ad valorem property taxes by the District and the petitioners of project water over a five-year and ten-year period. The District may incorporate policies developed by the study in the Water Management Improvement Plan prepared under subsection (b). (106 Stat. 4616)

(4) Not less than ninety days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including public hearings. All significant

comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

(5) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any policies or recommendations contained in the study.

**(d) [Study of coordinated operations.]**—(1) Within three years from the date of enactment of this Act, the District, after consultation with the State and each petitioner of project water, shall prepare and transmit to the Secretary a study of the coordinated operation of independent municipal and industrial and irrigation water systems, together with its conclusions and recommendations. The District shall evaluate cost-effective flexible operation procedures that will—

(A) improve the availability and reliability of water supply;

(B) coordinate the timing of reservoir releases under existing water rights to improve instream flows for fisheries, wildlife, recreation, and other environmental values, if possible;

(C) assist in managing drought emergencies by making more efficient use of facilities;

(D) encourage the maintenance of existing wells and other facilities which may be placed on stand-by status when water deliveries from the project become available;

(E) allow for the development, protection, and sustainable use of ground-water resources in the District boundary;

(F) not reduce the benefits that would be generated in the absence of the joint operating procedures; and

(G) integrate management of surface and ground-water supplies and storage capability.

The District may incorporate measures developed by the study in the Water Management Improvement Plan prepared under subsection (b).

(2) Not less than ninety days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including public hearings. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

(3) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any operating procedures, conclusions, or recommendations contained in the study. (106 Stat. 4616)

**(e) [Authorization of Appropriations.]**—(1) For an amount not to exceed 50 percent of the cost of conducting the studies identified in subsections (c) and (d) and developing the plan identified in subsection (b), \$3,000,000 shall

be available from the amount authorized to be appropriated by section 201, and shall remain available until expended. The Federal share shall be allocated among project purposes in the same proportions as the joint costs of the Strawberry Collection System, and shall be repaid in the manner of repayment for each such purpose.

(2) For an amount not to exceed 65 percent of the cost of implementation of the conservation measures in accordance with subsection (b), \$50,000,000 shall be available from the amount authorized to be appropriated in section 201, and shall remain available until expended. \$10,000,000 authorized by this paragraph shall be made available for conservation measures in Wasatch County identified in the study pursuant to section 202(a)(3)(A) which measures satisfy the requirements of subsection (b)(2)(B) and shall thereafter be available for the purposes of this paragraph. The Federal share shall be allocated between the purposes of municipal and industrial water supply and irrigation, as appropriate, and shall be repaid in the manner of repayment for each such purpose.

**(f) [Utah Water Conservation Advisory Board—Establishment—Water conservation standards and regulations]**—(1) Within two years of the date of enactment of this Act, the Governor of the State may establish a board consisting of nine members to be known as the Utah Water Conservation Advisory Board, with the duties described in this subsection. In the event that the Governor does not establish said board by such date, the Secretary shall establish a Utah Water Conservation Advisory Board consisting of nine members appointed by the Secretary from a list of names supplied by the Governor.

(2) The Board shall recommend water conservation standards and regulations for promulgation by State or local authorities in the service area of each petitioner of project water, including but not limited to the following:

(A) metering or measuring of water to all customers, to be accomplished within five years. (For purposes of this paragraph, residential buildings of more than four units may be considered as single customers.);

(B) elimination of declining block rate schedules from any system of water or wastewater treatment charges;

(C) a program of leak detection and repair that provides for the inspection of all conveyance and distribution mains, and the performance of repairs, at intervals of three years or less;

(D) low consumption performance standards applicable to the sale and installation of plumbing fixtures and fittings in new construction;

(E) requirements for the recycling and reuse of water by all newly constructed commercial laundries and vehicle wash facilities;

(F) requirements for soil preparation prior to the installation or seeding of turf grass in new residential and commercial construction;

(G) requirements for the insulation of hot water pipes in all new construction;

(H) requirements for the installation of water recycling or reuse systems on any newly installed commercial and industrial water-operative air conditioning and refrigeration systems;

(I) standards governing the sale, installation, and removal of self-regenerating water softeners, including the identification of public water supply system service areas where such devices are prohibited, and the establishment of standards for the control of regeneration in all newly installed devices; and

(J) elimination of evaporation as a principal method of wastewater treatment.

(3) Any water conserved by implementation of subparagraphs (A), (B), (C), (D), or (F) of paragraph (2) shall not be credited to the conservation goal specific under subparagraph (b)(1)(A). All other water conserved after January 1, 1992, by a conservation measure which is placed on the active inventory shall be credited to the conservation goal specified under subparagraph (b)(1)(A).

(4) The Governor may waive the applicability of paragraphs (2)(D) through (2)(H) above to any petitioner of project water that provides water entirely for irrigation use. (106 Stat. 4616)

(5) Within three years of the date of enactment of this Act, the board shall transmit to the Governor and the Secretary the recommended standards and regulations referred to in subparagraph (f)(2) in such form as, in the judgment of the board, will be most likely to be promulgated within four years of the date of enactment of this Act, and the failure of the board to do so shall be deemed substantial noncompliance.

(6) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any standards or regulations recommended by the Utah Water Conservation Advisory Board.

**(g) [Compliance.]**—(1) Notwithstanding subsections (c)(5), (d)(3) or (f)(6), if the Secretary after ninety days written notice to the District, determines that the plan referred to in subsection (b) has not been developed and implemented or the studies referred to in subsections (c) and (d) have not been completed or transmitted as provided for in this section, the District shall pay a surcharge for each year of substantial noncompliance as determined by the Secretary. The amount of the surcharge shall be—

(A) for the first year of substantial noncompliance, five percent of the District's annual Bonneville Unit repayment obligation to the Secretary;

(B) for the second year of substantial noncompliance, ten percent of the District's annual Bonneville Unit repayment obligation to the Secretary; and

(C) for the third year of substantial noncompliance and any succeeding year of substantial noncompliance, fifteen percent of the District's annual Bonneville Unit repayment obligation to the Secretary.

(2) If the Secretary determines that compliance has been accomplished within twelve months after the first determination of substantial noncompliance, the Secretary shall refund 100 percent of the surcharge levied.

**(h) [Reclamation Reform Act of 1982.]**—Compliance with this section shall be deemed as compliance with section 210 of the Reclamation Reform Act of 1982 (96 Stat. 1268; 43 U.S.C. § 390jj) by the District and each petitioner of project water.

**(i) [Judicial review.]**—(1) For the purposes of sections 701 through 706 of title 5 (U.S.C.), the determinations made by the Secretary under subsections (b), (f)(1) or (g) shall be final actions subject to judicial review.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with sections 701 through 706 of title 5 (U.S.C.). Nothing in this subsection shall be construed to require a hearing pursuant to sections 554, 556, or 557 of title 5 (U.S.C.).

(3) Nothing in this subsection shall be construed to preclude judicial review of other final actions and decisions by the Secretary.

**(j) [Citizen suits.]**—(1) **[In general.]**—Any person may commence a civil suit on their own behalf against only the Secretary for any determination made by the Secretary under this section which is alleged to have violated, is violating, or is about to violate any provision of this section or determination made under this section. (106 Stat. 4616)

**(2) [Jurisdiction and venue.]**—The district courts shall have jurisdiction to prohibit any violation by the Secretary of this section, to compel any action required by this section, and to issue any other order to further the purposes of this section. An action under this subsection may be brought in the judicial district where the alleged violation occurred or is about to occur, where fish, wildlife, or recreation resources are located, or in the District of Columbia.

**(3) [Limitations.]**—(A) No action may be commenced under paragraph (1) before sixty days after written notice of the violation has been given to the Secretary.

(B) Notwithstanding subparagraph (A), an action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife.

(C) Subparagraph (A) is intended to provide reasonable notice where possible and not to affect the jurisdiction of the courts.

**(4) [Costs awarded by the court.]**—The court may award costs of litigation (including reasonable attorney and expert witness fees and

expenses) to any party, other than the United States, whenever the court determines such award is appropriate.

**(5) [Disclaimer.]**—The 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.

**(k) [Preservation of State law.]**—Nothing in this section shall be deemed to preempt or supersede State law. (106 Stat. 4616-4624)

**Sec. 208. [Limitation on hydropower operations.]—(a) [Limitation.]**—Power generation facilities associated with the Central Utah Project and other features specified in titles II through V of this Act shall be operated and developed in accordance with the Act of April 11, 1956 (70 Stat. 109; 43 U.S.C. § 620f).

**(b) [Colorado River Basin waters.]**—Use of Central Utah Project water diverted out of the Colorado River Basin for power purposes shall only be incidental to the delivery of water for other authorized project purposes. Diversion of such waters out of the Colorado River Basin exclusively for power purposes is prohibited. (105 Stat. 4624)

**Sec. 209. [Operating agreements.]**—The District, in consultation with the Commission and the Utah Division of Water Rights, shall apply its best efforts to achieve operating agreements for the Jordanelle Reservoir, Deer Creek Reservoir, Utah Lake and Strawberry Reservoir within two years of the date of enactment of this Act.

**Sec. 210. [Jordan Aqueduct prepayment.]**—Under such terms as the Secretary may prescribe, and within one year of the date of enactment of this Act, the Secretary shall allow for the prepayment, or shall otherwise dispose of, repayment contracts entered into among the United States, the District, the Metropolitan Water District of Salt Lake City, and the Salt Lake County Water Conservancy District, dated May 16, 1986, providing for repayment of the Jordan Aqueduct System. The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District. The District shall exercise its right to prepayment pursuant to this section by the end of fiscal year 2002. Nothing in this section authorizes or terminates the authority to use tax exempt bond financing for this prepayment. (106 Stat. 4624, 110 Stat. 3387)

October 30, 1992

CENTRAL UTAH PROJECT

3837

EXPLANATORY NOTE

**1996 Amendment.** Section 1 of the Act of October 11, 1996 (Public Law 104-286, 110 Stat. 3387) amended section 210 by striking the second sentence and inserted the language that appears above. The former second sentence read as follows: "In carrying out this section, the Secretary shall take such actions as he deems appropriate to accommodate, effectuate, and otherwise protect the rights and obligations of the United States and the obligors under the contracts executed to provide for payment of such repayment contracts." The 1996 Act appears in Volume V at page 4095.

**Sec. 211. [Audit of Central Utah Project cost allocations.]**—Not later than one year after the date on which the Secretary declares the Central Utah Project to be substantially complete, the Comptroller General of the United States shall conduct an audit of the allocation of costs of the Central Utah Project to irrigation, municipal and industrial, and other project purposes and submit a report of such audit to the Secretary and to the Congress. The audit shall be conducted in accordance with regulations which the Comptroller General shall prescribe not later than one year after the date of enactment of this Act. Upon a review of such report, the Secretary shall reallocate such costs as may be necessary. Any amount allocated to municipal and industrial water in excess of the total maximum repayment obligation contained in repayment contracts dated December 28, 1965, and November 26, 1985, shall be deferred for as long as the District is not found to be in substantial noncompliance with the water management improvement program provided in section 207 and the stream flows provided in title III are maintained. If at any time the Secretary finds that such program is in substantial noncompliance or that such stream flows are not being maintained, the Secretary shall, within six months of such finding and after public notice, take action to initiate repayment of all such reimbursable costs.

**Sec. 212. [Surplus crops.]**—Notwithstanding any other provision of law relating to a charge for irrigation water supplied to surplus crops, until the construction costs of the facilities authorized by this title are repaid, the Secretary is directed to charge a surplus crop production charge equal to 10 percent of full cost, as defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. § 390bb), for the delivery of project water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provision of the Agricultural Act of 1949, as amended, if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year. (106 Stat. 4625)

TITLE III—FISH, WILDLIFE, AND RECREATION  
MITIGATION AND CONSERVATION

**Sec. 301. [Utah Reclamation Mitigation and Conservation Commission.]—(a) [Purpose.]—**(1) The purpose of this section is to provide for the prompt establishment of the Utah Reclamation Mitigation and Conservation Commission in order to coordinate the implementation of the mitigation and conservation provisions of this Act among the Federal and State fish, wildlife, and recreation agencies.

(2) This section, together with applicable environmental laws and the provisions of other laws applicable to mitigation, conservation and enhancement of fish, wildlife, and recreation resources within the State, are all intended to be construed in a consistent manner. Nothing herein is intended to limit or restrict the authorities or opportunities of Federal, State, or local governments, or political subdivisions thereof, to plan, develop, or implement mitigation, conservation, or enhancement of fish, wildlife, and recreation resources in the State in accordance with other applicable provisions of Federal or State law.

**(b) [Establishment.]—**(1) There is established a commission to be known as the Utah Reclamation Mitigation and Conservation Commission.

(2) The Commission shall expire twenty years from the end of the fiscal year during which the Secretary declares the Central Utah Project to be substantially complete. The Secretary shall not declare the project to be substantially complete at least until such time as the mitigation and conservation projects and features provided for in section 315 have been completed in accordance with the fish, wildlife, and recreation mitigation and conservation schedule specified therein.

**(c) [Duties.]—**The Commission shall—(1) formulate the policies and objectives for the implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in this Act;

(2) administer in accordance with subsection (f) the expenditure of funds for the implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in this Act;

(3) be considered a Federal agency for purposes of compliance with the requirements of all Federal fish, wildlife, recreation, and environmental laws, including (but not limited to) the Fish and Wildlife Coordination Act, the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.), and the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.); and

(4) develop, adopt, and submit plans and reports of its activities in accordance with subsection (g).

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3839

EXPLANATORY NOTE

**References in the Text.** The Fish and Wildlife Coordination Act, Act of August 14, 1946 (ch. 60 Stat. 1080) referenced above appears in Volume II at page 839. Amendments appear at pages 1823 and 1434. Annotations appear in Supplement I at page S167.  
The National Environmental Policy Act of 1969, Act of January 1, 1970 (Public Law 91-190, 83 Stat.852) referenced above appears in Volume IV at page 2492.  
The Endangered Species Act, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884) referenced above appears in Volume IV at page 2782.

**(d) [Membership.]**—(1) The Commission shall be composed of 5 members appointed by the President within six months of the date of enactment of this Act, as follows:

(A) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish or wildlife matters or environmental conservation matters, submitted by the Speaker of the House of Representatives upon the recommendation of the members of the House of Representatives representing the State.

(B) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish or wildlife matters or environmental conservation matters, submitted by the Majority Leader of the Senate upon the recommendation of the members of the Senate representing the State.

(C) 1 from a list of residents of the State submitted by the Governor of the State composed of State wildlife resource agency personnel.

(D) 1 from a list of residents of the State submitted by the District.

(E) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish and wildlife matters or environmental conservation matters and have been recommended by Utah nonprofit sportsmen's or environmental organizations, submitted by the Governor of the State.

(2)(A) Except as provided in subparagraph (B), members shall be appointed for terms of four years. (106 Stat. 4625)

(B) Of the members first appointed—

(i) the member appointed under paragraph (1)(C) shall be appointed for a term of three years; and

(ii) the member appointed under paragraph (1)(D) shall be appointed for a term of two years.

(3) A vacancy in the Commission shall be filled within ninety days and in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the

3840 UTAH FISH, WILDLIFE, AND RECREATION

remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be paid at a rate equal to the daily equivalent of the maximum of the annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(B) Members of the Commission who are full-time officers or employees of the United States or the State of Utah shall receive no additional pay by reason of their service on the Commission.

(5) Three members of the Commission shall constitute a quorum but a lesser number may hold public meetings authorized by the Commission.

(6) The Chairman of the Commission shall be elected by the members of the Commission. The term of office of the Chairman shall be one year.

(7) The Commission shall meet at least quarterly and may meet at the call of the Chairman or a majority of its members.

(8) Any employee of the District or member of the board of Directors of the District may serve as a member of the Commission. (106 Stat. 4625)

EXPLANATORY NOTE

**1994 Amendment.** Section 302 of the Act of October 31, 1994, (Public Law 103-434, 108 Stat. 4536) amended section 301(d) above by the addition of paragraph 8. Section 302 of the 1994 Act appears in Volume V at page 4023.

**(e) [Director and staff of commission—Use of consultants.]—(1)** The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-15 of the General Schedule.

(2) With the approval of the Commission, the Director may appoint and fix the pay of such personnel as the Director considers appropriate. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid 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.

(3) With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-15 of the General Schedule.

(4) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3841

agency to the Commission to assist the Commission in carrying out its duties under this Act.

(5) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(6) In times of emergency, as defined by rule by the Commission, the Director may exercise the full powers of the Commission until such times as the emergency ends or the Commission meets in formal session.

**(f) [Implementation of mitigation and conservation measures.]—**

(1) The Commission shall administer the mitigation and conservation funds available under this Act to conserve, mitigate, and enhance fish, wildlife, and recreation resources affected by the development and operation of Federal reclamation projects in the State of Utah. Such funds shall be administered in accordance with this section, the mitigation and conservation schedule in section 315 of this Act, and, if in existence, the applicable five-year plan adopted pursuant to subsection (g). Expenditures of the Commission pursuant to this section shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

**(2) [Reallocation of section 8 funds.]—**Notwithstanding any provision of this act which provides that a specified amount of section 8 funds available under this Act shall be available only for a certain purpose, if the Commission determines, after public involvement and agency consultation as provided in subsection (g)(3), that the benefits to fish, wildlife, or recreation will be better served by allocating such funds in a different manner, then the Commission may reallocate any amount so specified to achieve such benefits: *Provided, however,* That the Commission shall obtain the prior approval of the United States Fish and Wildlife Service for any reallocation from fish or wildlife purposes to recreation purposes of any of the funds authorized in the schedule in section 315.

**(3) [Funding for NEPA compliance.]—**The Commission shall annually provide funding on a priority basis for environmental mitigation measures adopted as a result of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) for project features constructed pursuant to titles II and III of this Act. (106 Stat. 4625)

**(4) [Contracting authority.]—**The Commission shall, for the purpose of carrying out this Act, enter into and perform such contracts, leases, grants, cooperative agreements, or other similar transactions, including the amendment, modification, or cancellation thereof and make the compromise or final settlement of any claim arising thereunder, with universities, non-profit organizations, and the appropriate public natural resource management agency or agencies, upon such terms and conditions and in such manner as the Commission may deem to be necessary or

appropriate, for the implementation of the mitigation and conservation projects and features authorized in this Act, including actions necessary for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).

**(g) [Planning and reporting.]**—(1) Beginning with the first fiscal year after all members of the Commission are appointed initially, and every five years thereafter, the Commission shall develop and adopt by March 31 a plan for carrying out its duties during each succeeding five-year period. Each such plan shall consist of the specific objectives and measures the Commission intends to administer under subsection (f) during the plan period to implement the mitigation and conservation projects and features authorized in this Act.

**(2) [Final plan.]**—Within six months prior to the expiration of the Commission pursuant to this Act, the Commission shall develop and adopt a plan which shall—

(A) establish goals and measurable objectives for the mitigation and conservation of fish, wildlife, and recreation resources during the five-year period following such expiration;

(B) recommend specific measures for the expenditure of funds from the Account established under section 402 of this Act.

**(3) [Public involvement and agency consultation—Regulations required—Public information.]**—

(A) Promptly after the Commission is established under this section, and in each succeeding fiscal year, the Commission shall request in writing from the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and county and municipal entities, and the public, recommendations for objectives and measures to implement the mitigation and conservation projects and features authorized in this Act or amendments thereto. The Commission shall establish by rule a period of time not less than ninety days in length within which to receive such recommendations, as well as the format for and the information and supporting data that is to accompany such recommendations. (106 Stat. 4625)

(B) The Commission shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public. Copies of such recommendations and supporting documents shall be made available for review at the offices of the Commission and shall be available for reproduction at reasonable cost.

(C) The Commission shall provide for public involvement regarding the recommendations and supporting documents within such reasonable time as the Commission by rule deems appropriate.

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3843

(4) The Commission shall develop and amend the plans on the basis of such recommendations, supporting documents, and views and information obtained through public involvement and agency consultation. The Commission shall include in the plans measures which it determines, on the basis set forth in paragraph (f)(1), will—

(A) restore, maintain, or enhance the biological productivity and diversity of natural ecosystems within the State and have substantial potential for providing fish, wildlife, and recreation mitigation and conservation opportunities;

(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 or recreational objectives exist, the alternative that will also provide public benefits through multiple resource uses;

(D) complement the existing and future activities of the Federal and State fish, wildlife, and recreation agencies and appropriate Indian tribes;

(E) utilize, when available, cooperative agreements and partnerships with private landowners and nonprofit conservation organizations; and

(F) be consistent with the legal rights of appropriate Indian tribes.

Enhancement measures may be included in the plans to the extent such measures are designed to achieve improved conservation or mitigation of resources.

**(5) [Agency consultation.]**—Commission plans developed in accordance with this subsection, or implemented under subsection (f), that affect National Forest System lands shall be developed and implemented in consultation with the Secretary of Agriculture.

**(6) [Reporting.]**—(A) Beginning on December 1 of the first fiscal year in which all members of the Commission are appointed initially, the Commission shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate, to the Committees on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives, to the Secretary, and to the Governor of the State. The report shall describe the actions taken and to be taken by the Commission under this section, the effectiveness of the mitigation and conservation measures implemented to date, and potential revisions or modifications to the applicable mitigation and conservation plan.

(B) At least sixty days prior to its submission of such report, the Commission shall make a draft of such report available to the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public, and establish procedures for timely comments thereon. The Commission shall include a summary of such comments as an appendix to such report. (106 Stat. 4625)

**(h) [Discretionary duties and powers.]**—In addition to any other duties and powers provided by law—

(1) The Commission may depart from the fish, wildlife, and recreation mitigation and conservation schedule specified in section 315 whenever the Commission determines, after public involvement and agency consultation as provided for in this Act, that such departure would be of greater benefit to fish, wildlife, or recreation: *Provided, however,* That the Commission shall obtain the prior approval of the United States Fish and Wildlife Service for any reallocation from fish or wildlife purposes to recreation purposes of any of the funds authorized in the schedule in section 315.

(2) The Commission may, for the purpose of carrying out this Act—

(A) hold such public meetings, sit and act at such times and places, take such testimony, and receive such evidence, as a majority of the Commission considers appropriate; and

(B) meet jointly with other Federal or State authorities to consider matters of mutual interest.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Director of the Commission, the head of such department or agency shall furnish such information to the Commission. At the discretion of the department or agency, such information may be provided on a reimbursable basis.

(4) The Commission may accept, use, and dispose of appropriations, gifts or grants of money or other property, or donations of services, from whatever source, only to carry out the purposes of this Act.

(5) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(7) The Commission may acquire and dispose of personal and real property and water rights, and interests therein, through donation, purchase on a willing seller basis, sale, or lease, but not through direct exercise of the power of eminent domain, in order to carry out the purposes of this Act. This provision shall not affect any existing authorities of other agencies to carry out the purposes of this Act.

(8) The Commission may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for travel, training, and attendance at meetings; and for such other facilities and services as may be necessary for the administration of this Act.

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3845

(9) The Commission shall not participate in litigation, except litigation pursuant to subsection (1) or condemnation proceedings initiated by other agencies. (106 Stat. 4625)

**(i) [Funding.]**—(1) Amounts appropriated to the Secretary for the Commission shall be paid to the Commission immediately upon receipt of such funds by the Secretary. The Commission shall expend such funds in accordance with this Act.

(2) For each fiscal year, the Commission is authorized to use for administrative expenses an amount equal to 10 percent of the amounts available to the Commission pursuant to this Act during such fiscal year, but not to exceed \$1,000,000. Such amount shall be increased by the same proportion as the contributions to the Account under section 402(b)(3)(C).

**(j) [Availability of unexpended amounts upon completion of construction projects.]**—Notwithstanding any other provision of law, upon the completion of any project authorized under this title, Federal funds appropriated for that project but not obligated or expended shall be deposited in the Account pursuant to section 402(b)(4)(D) and shall be available to the Commission in accordance with section 402(c)(2).

**(k) [Transfer of property and authority held by the Commission.]**—Except as provided in section 402(b)(4)(A), upon the termination of the Commission in accordance with subsection (b)—

(1) the duties of the Commission shall be performed by the Utah Division of Wildlife Resources, which shall exercise such authority in consultation with the United States Fish and Wildlife Service, the District, the Bureau, and the Forest Service; and

(2) title to any real and personal properties then held by the Commission shall be transferred to the appropriate division within Utah Department of Natural Resources or, for such parcels of real property as may be within the boundaries of Federal land ownerships, to the appropriate Federal agency.

**(l) [Representation by Attorney General.]**—The Attorney General of the United States shall represent the Commission in any litigation to which the Commission is a party.

**(m) [Congressional oversight.]**—The activities of the Commission shall be subject to oversight by the Congress.

**(n) [Termination of Bureau activities.]**—Upon appointment of the Commission as provided in subsection (b), the responsibility for implementing section 8 funds for mitigation and conservation projects and features authorized in this Act shall be transferred from the Bureau to the Commission. (106 Stat. 4625-4632)

**Sec. 302. [Increased project water capability.]**—**(a) [Acquisition.]**—The District shall acquire, on an expedited basis with funds to be provided by the Commission in accordance with the schedule specified in section 315, by purchase from willing sellers or exchange, twenty-five thousand acre-feet of

water rights in the Utah Lake drainage basin to achieve the purposes of this section. Water purchases which would have the effect of compromising groundwater resources or dewatering agricultural lands in the Upper Provo River areas should be avoided. Of the amounts authorized to be appropriated by section 201, \$15,000,000 shall be available only for the purposes of this subsection.

**(b) [Nonconsumptive rights.]**—A nonconsumptive right in perpetuity to any water acquired under this section shall be tendered in accordance with the laws of the State of Utah within thirty days of its acquisition by the District to the Utah Division of Wildlife Resources for the purposes of maintaining instream flows provided for in section 303(c)(3) and 303(c)(4) for fish, wildlife, and recreation in the Provo River.

**(c) [Authorization of appropriations.]**—Of the amounts authorized to be appropriated by section 201, \$4,000,000 shall be available only to modify existing or construct new diversion structures on the Provo River below the Murdock diversion to facilitate the purposes of this section. (106 Stat. 4632)

**Sec. 303. [Stream flows.]—(a) [Stream Flow Agreement.]**—The District shall annually provide, from project water if necessary, amounts of water sufficient to sustain the minimum stream flows established pursuant to the Stream Flow Agreement.

**(b) [Increased flows in the upper Strawberry River tributaries.]**—(1) the District shall acquire, on an expedited basis with funds to be provided by the Commission, or by the Secretary in the event the Commission has not been established, in accordance with State law, the provisions of this section, and the schedule specified in section 315, all of the Strawberry basin water rights being diverted to the Heber Valley through the Daniels Creek drainage and shall apply such rights to increase minimum stream flows

(A) in the upper Strawberry River and other tributaries to the Strawberry Reservoir;

(B) in the lower Strawberry River from the base of Soldier Creek Dam to Starvation Reservoir; and

(C) in other streams within the Uinta basin affected by the Strawberry Collection System in such a manner as deemed by the Commission in consultation with the United States Fish and Wildlife Service and the Utah State Division of Wildlife Resources to be in the best interest of fish and wildlife.

The Commission's decision under subparagraph (C) shall not establish a statutory or otherwise mandatory minimum stream flow.

(2) The District may acquire the water rights identified in paragraph (1) prior to completion of the facilities identified in paragraph (3) only by lease and for a period not to exceed two years from willing sellers or by replacement or exchange of water in kind. Such leases may be extended for one additional year with the consent of Wasatch and Utah counties. The

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3847

District shall proceed to fulfill the purposes of this subsection on an expedited basis but may not lease water from the Daniels Creek Irrigation Company before the beginning of fiscal year 1993.

(3)(A) The District shall construct with funds provided for in paragraph (4) a Daniels Creek replacement pipeline from the Jordanelle Reservoir to the existing Daniels Creek Irrigation Company Water storage facility for the purpose of providing a permanent replacement of water in an amount equal to the Strawberry basin water being supplied by the District for stream flows provided in paragraph (1) which would otherwise have been diverted to the Daniels Creek drainage. (106 Stat. 4632)

(B) Such Daniels Creek replacement water may be exchanged by the District in accordance with State law with the Strawberry basin water identified above to provide a permanent supply of water for minimum flows provided in paragraph (1). Any such permanent replacement water so exchanged into the Strawberry basin by the District shall be tendered in accordance with State law within thirty days of its exchange by the District to the Utah Division of Wildlife Resources for the purposes of providing stream flows under paragraph (1).

(C) The Daniels Creek replacement water to be supplied by the District shall be at least equal in quality and reliability to the Daniels Creek water being replaced and shall be provided by the District at a cost to the Daniels Creek Irrigation Company which does not exceed the cost of supplying existing water deliveries (including operation and maintenance) through the Daniels Creek diversion.

(4) Of the amounts authorized to be appropriated by section 201, \$10,500,000 shall be available to fulfill the purposes of this section as follows:

(A) \$500,000 for leasing of water pursuant to paragraph (2).

(B) \$10,000,000 for construction of the Daniels Creek replacement pipeline.

(C) Funds provided by this paragraph shall not be subject to the requirements of section 204 and shall be included in the final cost allocation provided for in section 211; except that not less than \$3,500,000 shall be treated as an expense under section 8, and \$7,000,000 shall be treated as an expense under section 5 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. § 105).

(D) Funds provided for the Daniels Creek replacement pipeline may be expended so as to integrate such pipeline with the Wasatch County conservation measures provided for in section 207(e)(2) and the Wasatch County Water Efficiency Project authorized in section 202(a)(3).

**(c) [Stream flows in the Bonneville Unit.]**—The yield and operating plans for the Bonneville Unit of the Central Utah Projects all be established or adjusted to provide for the following minimum stream flows, which flows shall

be provided continuously and in perpetuity from the date first feasible, as determined by the Commission in consultation with the United States Fish and Wildlife Service and the Utah State Division of Wildlife Resources:

(1) In the Diamond Fork River drainage subsequent to completion of the Monks Hollow Dam or other structure that rediverts water from the Diamond Fork River Drainage into the Diamond Fork component of the Bonneville Unit of the Central Utah Project—

(A) in Sixth Water Creek, from the exit of Strawberry Valley Tunnel to the Last Chance Powerplant and Switch yard, not less than thirty-two cubic feet per second during the months of May through October and not less than twenty-five cubic feet per second during the months of November through April, and

(B) in the Diamond Fork River, from the bottom of the Monks Hollow Dam to the Spanish Fork River, not less than eighty cubic feet per second during the months of May through September and not less than sixty cubic feet per second during the months of October through April, which flows shall be provided by the Bonneville Unit of the Central Utah Project. (106 Stat. 4632)

(2) In the Provo River from the base of Jordanelle Dam to Deer Creek Reservoir a minimum of one hundred and twenty-five cubic feet per second.

(3) In the Provo River from the confluence of Deer Creek and the Provo River to the Olmsted Diversion a minimum of one hundred cubic feet per second.

(4) Upon the acquisition of the water rights in the Provo Drainage identified in section 302, in the Provo River from the Olmsted Diversion to Utah Lake, a minimum of seventy-five cubic feet per second.

(5) In the Strawberry River, from the base of Starvation Dam to the confluence with the Duchesne River, a minimum of fifteen cubic feet per second.

**(d) [Mitigation of excessive flows in the Provo River.]**—The District shall, with public involvement, prepare and conduct a study and develop a plan to mitigate the effects of peak season flows in the Provo River. Such study and plan shall be developed in consultation with the Fish and Wildlife Service, the Utah Division of Water Rights, the Utah Division of Wildlife Resources, affected water right holders and users, the Commission, and the Bureau. The study and plan shall discuss and be based upon, at a minimum, all mitigation and conservation opportunities identified through—

(1) a fishery and recreational use study that addresses anticipated peak flows;

(2) study of the mitigation and conservation opportunities possible through habitat or stream bed modification;

(3) study of the mitigation and conservation opportunities associated with the operating agreements referred to in section 209;

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3849

(4) study of the mitigation and conservation opportunities associated with the water acquisitions contemplated by section 302;

(5) study of the mitigation and conservation opportunities associated with section 202(2);

(6) study of the mitigation and conservation opportunities available in connection with water right exchanges; and

(7) study of the mitigation and conservation opportunities that could be achieved by construction of a bypass flowline from the base of Deer Creek Reservoir to the Olmsted Diversion.

**(e) [Earmark.]**—Of the amounts authorized to be appropriated by section 201, \$500,000 shall be available only for the implementation of subsection (d).

**(f) [Strawberry Valley Tunnel.]**—(1) Upon completion of the Diamond Fork System, the Strawberry Tunnel shall not be used except for deliveries of water for the instream purposes specified in subsection (c). All other waters for the Bonneville Unit and Strawberry Valley Reclamation Project purposes shall be delivered through the Diamond Fork System.

(2) Paragraph (1) shall not apply during any time in which the District, in consultation with the Commission, has determined that the Syar Tunnel or the Sixth Water Aqueduct is rendered unusable or emergency circumstances require the use of the Strawberry Valley Tunnel for the delivery of contracted Central Utah Project water and Strawberry Valley Reclamation Project water. (106 Stat. 4632-4635)

**Sec. 304. [Fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report for the Central Utah Project.]**—The fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report which have not been completed as of the date of enactment of this Act shall be completed in accordance with the 1988 Definite Plan Report and the schedule specified in section 315, unless otherwise provided in this Act. (106 Stat. 4635)

**Sec. 305. [Wildlife lands and improvements.]—(a) [Acquisition of rangelands.]**—In addition to lands acquired on or before the date of enactment of this Act and in addition to the acreage to be acquired in accordance with the 1988 Definite Plan Report, the Commission shall acquire on an expedited basis from willing sellers, in accordance with the schedule specified in section 315 and a plan to be developed by the Commission, big game winter range lands to compensate for the impacts of Federal reclamation projects in Utah. Such lands shall be transferred to the Utah Division of Wildlife Resources or, for such parcels as may be within the boundaries of Federal land ownerships, to the appropriate Federal agency, for management as a big game winter range. In the case of such transfers, lands acquired within the boundaries of a national forest shall be administered by the Secretary of Agriculture as a part of the National Forest System. Of the amounts authorized

to be appropriated by section 201, \$1,300,000 shall be available only for the purposes of this subsection.

**(b) [Big game crossings and wildlife escape ramps.]**—In addition to the measures to be taken in accordance with the 1988 Definite Plan Report, the Commission shall construct big game crossings and wildlife escape ramps for the protection of big game animals along the Provo Reservoir Canal, Highline Canal, Strawberry Power Canal, and others. Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available only for the purposes of this subsection. (106 Stat. 4635-4636)

**Sec. 306. [Wetlands acquisition, rehabilitation, and enhancement.]—(a) [Wetlands around the Great Salt Lake.]**—Of the amounts authorized to be appropriated by section 201, \$14,000,000 shall be available only for the planning and implementation of projects to preserve, rehabilitate, and enhance wetland areas around the Great Salt Lake in accordance with a plan to be developed by the Commission.

**(b) [Inventory of sensitive species and ecosystems.]—(1)** The Commission shall, in cooperation with the Utah Division of Wildlife Resources and other appropriate State and Federal agencies, inventory, prioritize, and map the occurrences in Utah of sensitive nongame wildlife species and their habitats.

(2) Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available only to carry out paragraph (1) of this section.

(3) The Commission shall, in cooperation with the Utah Department of Natural Resources and other appropriate State and Federal agencies, inventory, prioritize, and map the occurrences in Utah of sensitive plant species and ecosystems.

(4) Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available for the Utah Natural Heritage Program only to carry out paragraph (3) of this section.

**(c) [Utah Lake Wetlands Preserve.]—(1)** The Commission, in consultation with the Utah Division of Wildlife Resources and the United States Fish and Wildlife Service, shall, in accordance with paragraph (9), acquire private land, water rights, conservation easements, or other interests therein, necessary for the establishment of a wetlands preserve adjacent to or near the Goshen Bay and Benjamin Slough areas of Utah Lake as depicted on a map entitled "Utah Lake Wetland Preserve" and dated September 1990. Such a map shall be on file and available for inspection in the office of the Secretary of the Interior, Washington, District of Columbia.

(2) The Secretary shall enter into an agreement under which the Wetlands Preserve acquired under paragraph (1) shall be managed by the Utah Division of Wildlife Resources pursuant to a plan developed in consultation

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3851

with the Secretary and in accordance with this Act and the substantive requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. § 668dd et seq.). (106 Stat. 4636)

EXPLANATORY NOTE

**References in the Text.** The National Wildlife Refuge System Administration Act of 1966 referenced above does not appear herein. References to the Act appear in Volume IV at pages 2975, 2978, and 2981.

(3) The Wetlands Preserve shall be managed for the protection of migratory birds, wildlife habitat, and wetland values in a manner compatible with the surrounding farmlands, orchards, and agricultural production area. Grazing will be allowed for wildlife habitat management purposes in accordance with the Act referenced in paragraph (2) and as determined by the Division to be compatible with the purposes stated herein.

(4) Nothing in this subsection shall restrict traditional agricultural practices (including the use of pesticides) on adjacent properties not included in the preserve by acquisition or easement.

(5) Nothing in this subsection shall affect existing water rights under Utah State law.

(6) Nothing in this subsection shall grant authority to the Secretary to introduce a federally protected species into the wetlands preserve.

(7) The creation of this preserve shall not in any way interfere with the operation of the irrigation and drainage system authorized by section 202(a)(1).

(8) All water rights not appurtenant to the lands purchased for the Wetlands Preserve acquired under paragraph (1) shall be purchased from the District at an amount not to exceed the cost of the District in acquiring such rights.

(9) Of the amounts authorized to be appropriated by section 201, \$16,690,000 shall be available for acquisition of the lands, water rights, and other interests therein described in paragraph (1) of this subsection for the establishment of the Utah Lake Wetland Preserve.

(10) Lands, easements, or water rights may not be acquired pursuant to this subsection without the consent of the owner of such lands or water rights.

(11) Base property of a lessee or permittee (and the heirs of such lessee or permittee) under a Federal grazing permit or lease held on the date of enactment of this Act shall include any land of such lessee or permittee acquired by the Commission under this subsection.

**(d) [Provo Bay.]**—In order to protect wetland habitat, the United States shall not issue any Federal permit which allows commercial, industrial, or residential development on the southern portion of Provo Bay in Utah Lake,

as described herein and depicted on a map dated October 11, 1990, except that recreational development consistent with wildlife habitat values shall be permitted. The southern portion of Provo Bay referred to in this subsection shall be that area extending two thousand feet out into the Bay from the ordinary high water line on the south shore of Provo Bay, beginning at a point at the mouth of the Spanish Fork River and extending generally eastward along the ordinary high water line to the intersection of such line with the Provo City limit, as it existed as of October 10, 1990, on the east shore of the Bay. Such a map shall be on file and available for inspection in the office of the Secretary of the Interior, Washington, District of Columbia. Nothing in this Act shall restrict present or future development of the Provo City Airport or airport access roads along the north side of Provo Bay. (106 Stat. 4636-4637)

**Sec. 307. [Fisheries acquisition, rehabilitation, and enhancement.]**—Of the amounts authorized to be appropriated by section 201, the following amounts shall be in addition to amounts available under the 1988 Definite Plan Report and shall be available only for fisheries acquisition, rehabilitation, and improvement within the State:

(1) \$750,000 for fish habitat restoration on the Provo River between the Jordanelle and Deer Creek Reservoirs.

(2) \$4,000,000 for fish habitat restoration in streams impacted by Federal reclamation projects in Utah.

(3) \$1,000,000 for the restoration of tributaries of the Strawberry Reservoir to assure trout spawning recruitment.

(4) \$1,500,000 for post-treatment management and fishery development costs at the Strawberry Reservoir.

(5) \$1,000,000 for (A) a study to be conducted as directed by the Commission to determine the appropriate means for improving Utah Lake as a warm water fishery and other related issues; and

(B) development of facilities and programs to implement management objectives.

(6) \$1,000,000 for fish habitat restoration and improvements in the Diamond Fork River and Sixth Water Creek drainages.

(7) \$475,000 for the restoration of native cutthroat trout populations in streams and lakes in the Bonneville Unit project area.

(8) \$2,500,000 for watershed restoration and improvements, erosion control, and wildlife habitat restoration and improvements in the Avintaquin, Red, and Currant Creek drainages and other Strawberry River drainages affected by the development of Federal reclamation projects in Utah. (106 Stat. 4637)

**Sec. 308. [Stabilization of high mountain lakes in the Uinta Mountains.]—(a) [Revision of plan.]**—The project plan for the stabilization of high mountain lakes in the Upper Provo River drainage shall be revised to

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3853

require that the following lakes will be stabilized at levels beneficial for fish habitat and recreation: Big Elk, Crystal, Duck, Fire, Island, Long, Wall, Marjorie, Pot, Star, Teapot, and Weir. Overland access by vehicles or equipment for stabilization and irrigation purposes under this subsection shall be minimized within the Lakes Management Area boundary, as depicted on the map in the Wasatch-Cache National Forest Plan (p. IV-166, dated 1987), to a level of practical necessity.

**(b) [Costs of rehabilitation.]**—(1) The costs of rehabilitating water storage features at Trial, Washington, and Lost Lakes, which are to be used for project purposes, shall be borne by the project from amounts made available pursuant to section 201. Existing roads may be used for overland access to carry out such rehabilitation.

(2) The costs of stabilizing each of the lakes referred to in subsection (a) which is to be used for a purpose other than irrigation shall be treated as an expense under section 8.

**(c) [Fish and wildlife habitat.]**—Of the amounts authorized to be appropriated by section 201, \$5,000,000 shall be available only for stabilization and fish and wildlife habitat restoration in the lakes referred to in subsection (a). This amount shall be in addition to the \$7,538,000 previously authorized for appropriation under section 5 of the Act of April 11, 1956 (43 U.S.C. § 620g) for the stabilization and rehabilitation of the lakes described in this section. (106 Stat. 4637)

EXPLANATORY NOTE

**References in the Text.** The Act of April 11, 1956 (ch. 203, 70 Stat. 105), commonly known as the "Colorado River Storage Project," referenced above, appears in Volume II at page 1248. Amendments and annotations appear in Volume IV at pages 2416 and 2871, Supplement I at S247, and Supplement II at page S873.

**Sec. 309. [Stream access and riparian habitat development.]—(a) [In general.]**—Of the amounts authorized to be appropriated by section 201, the following amounts shall be in addition to amounts available under the 1988 Definite Plan Report and shall be available only for stream access and riparian habitat development in the State:

(1) \$750,000 for rehabilitation of the Provo River riparian habitat development between Jordanelle Reservoir and Utah Lake.

(2) \$250,000 for rehabilitation and development of watersheds and riparian habitats along Diamond Fork and Sixth Water Creek.

(3) \$350,000 for additional watershed stabilization, terrestrial wildlife and riparian habitat improvements, and road closures within the Central Utah Project area.

(4) \$8,500,000 for the acquisition of additional recreation and angler accesses and riparian habitats, which accesses and habitats shall be acquired in accordance with the recommendation of the Commission.

**(b) [Study of impact to wildlife and riparian habitats which experience reduced water flows as a result of the Strawberry Collection System.]**—Of the amounts authorized to be appropriated by section 201, \$400,000 shall be available only for the Commission to conduct a study of the impacts to soils and riparian fish and wildlife habitat in drainages that will experience substantially reduced water flows resulting from the operation of the Strawberry Collection System. The study shall identify mitigation opportunities that represent alternatives to increasing stream flows and make recommendations to the Commission. (106 Stat. 4638)

**Sec. 310. [Section 8 expenses.]**—(a) Unless otherwise expressly provided, all of the amounts authorized to be appropriated by this Act and listed in subsection (b) of this section shall be treated as expenses under section 8.

(b) The sections referred to in subsection (a) of this section are as follows: title III, and section 402(b)(2). (106 Stat. 4639)

**Sec. 311. [Jordan and Provo River Parkways and natural areas.]**—(a) **[Fisheries.]**—Of the amounts authorized to be appropriated by section 201, \$1,150,000 shall be available only for fish habitat improvements to the Jordan River.

**(b) [Riparian habitat rehabilitation.]**—Of the amounts authorized to be appropriated by section 201, \$750,000 shall be available only for Jordan River riparian habitat rehabilitation, which amount shall be in addition to amounts available under the 1988 Definite Plan Report.

**(c) [Wetlands.]**—Of the amounts authorized to be appropriated by section 201, \$7,000,000 shall be available only for the acquisition of wetland acreage, including those along the Jordan River identified by the multi-agency technical committee for the Jordan River Wetlands Advance Identification Study.

**(d) [Recreational facilities.]**—(1) Of the amounts authorized to be appropriated by section 201, \$500,000 shall be available only to construct recreational facilities within Salt Lake County proposed by the State of Utah for the "Provo/Jordan River Parkway", a description of which is set forth in the report to accompany the bill H.R. 429 (S. Rept. 102-267).

(2) Of the amounts authorized to be appropriated by section 201, \$500,000 shall be available only to construct recreational facilities within Utah and Wasatch Counties proposed by the State of Utah for the "Provo/Jordan River Parkway", a description of which is set forth in the report to accompany the bill H.R. 429 (S. Rept. 102-267).

**(e) [Provo River corridor.]**—Of the amounts authorized to be appropriated by section 201, \$1,000,000 shall be available only for riparian habitat acquisition and preservation, stream habitat improvements, and recreation

October 30, 1992

UTAH FISH, WILDLIFE, AND RECREATION

3855

and angler access provided on a willing seller basis along the Provo River from the Murdock diversion to Utah Lake, as determined by the Commission after consultation with local officials. (106 Stat. 4639)

**Sec. 312. [Recreation.]**—Of the amounts authorized to be appropriated by section 201, the following amounts shall be available to the Commission only for Central Utah Project recreation features:

(a) \$2,000,000 for Utah Lake recreational improvements as proposed by the State and local governments.

(b) \$750,000 for additional recreation improvements, which shall be made in accordance with recommendations made by the Commission, associated with Central Utah Project features and affected areas, including camping facilities, hiking trails, and signing. (106 Stat. 4640)

**Sec. 313. [Fish and wildlife features in the Colorado River Storage Project.]**—Of the amounts authorized to be appropriated by section 201, the following amounts shall be available only to provide mitigation and restoration of watersheds and fish and wildlife resources in Utah impacted by the Colorado River Storage Project:

(a) **[Habitat improvements in certain drainages.]**—\$1,125,000 shall be available only for watershed and fish and wildlife improvements in the Fremont River drainage, which shall be expended in accordance with a plan developed by the Commission in consultation with the Wayne County Water Conservancy District.

(b) **[Small dams and watershed improvements.]**—\$4,000,000 shall be available only for land acquisition for the purposes of watershed restoration and protection in the Albion Basin in the Wasatch Mountains and for restoration and conservation related improvements to small dams and watersheds on State of Utah lands and National Forest System lands within the Central Utah Project and the Colorado River Storage Project area in Utah, which amounts shall be expended in accordance with a plan developed by the Commission.

(c) **[Fish hatchery production.]**—\$22,800,000 shall be available only for the planning and implementation of improvements to existing hatchery facilities or the construction and development of new fish hatcheries to increase production of warmwater and coldwater fishes for the areas affected by the Colorado River Storage Project in Utah. Such improvements and construction shall be implemented in accordance with a plan identifying the long-term needs and management objectives for hatchery production prepared by the United States Fish and Wildlife Service, in consultation with the Utah Division of Wildlife Resources, and adopted by the Commission. The cost of operating and maintaining such new or improved facilities shall be borne by the Secretary. (106 Stat. 4640)

**Sec. 314. [Concurrent mitigation appropriations.]**—Notwithstanding any other provision of this Act, the Secretary is directed to allocate funds

October 30, 1992

3856

UTAH FISH, WILDLIFE, AND RECREATION

appropriated for each fiscal year pursuant to titles II through IV of this Act as follows:

(a) Deposit the Federal contribution to the account authorized in section 402(b)(2).

(b) Of any remaining funds, allocate the amounts available for implementation of the mitigation and conservation projects and features specified in the schedule in section 315 concurrently with amounts available for implementation of title II of this Act.

(c) Of the amounts allocated for implementation of the mitigation and conservation projects and features specified in the schedule in section 315, three percent of the total shall be used by the Secretary to fulfill subsections (d) and (e) of this section.

(d) The Secretary shall use the sums identified in subsection (c) outside the State of Utah to:

(1) restore damaged natural ecosystems on public lands and waterways affected by the Federal Reclamation program;

(2) acquire, from willing sellers only, other lands and properties, including water rights, or appropriate interests therein, with restorable damaged natural ecosystems, and restore such ecosystems;

(3) provide jobs and sustainable economic development in a manner that carries out the other purposes of this subsection;

(4) provide expanded recreational opportunities; and

(5) support and encourage research, training, and education in methods and technologies of ecosystem restoration.

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties or appropriate interests therein where repair of compositional, structural, and functional values will:

(1) reconstitute natural biological diversity that has been diminished;

(2) assist the recovery of species populations, communities, and ecosystems that are unable to survive on-site without intervention;

(3) allow reintroduction and reoccupation by native flora and fauna;

(4) control or eliminate exotic flora and fauna that are damaging natural ecosystems;

(5) restore natural habitat for the recruitment and survival of fish, waterfowl, and other wildlife;

(6) provide additional conservation values to State and local government lands;

(7) add to structural and compositional values of existing ecological preserves or enhance the viability, defensibility, and manageability of ecological preserves; and

(8) restore natural hydrological effects including sediment and erosion control, drainage, percolation, and other water quality improvement capacity. (106 Stat. 4640)

October 30, 1992

UTAH RECLAMATION MITIGATION

3857

**Sec. 315. [Fish, wildlife, and recreation schedule.]**

TITLE IV—UTAH RECLAMATION MITIGATION AND  
CONSERVATION ACCOUNT

**Sec. 401. [Findings and purpose.]—(a) [Findings.]**—The Congress finds that—(1) the State of Utah is a State in which one of the largest trans-basin water diversions occurs, dewatering important natural areas as a result of the Colorado River Storage Project;

(2) the State of Utah is one of the most ecologically significant States in the Nation, and it is therefore important to protect, mitigate, and enhance sensitive species and ecosystems through effective long-term mitigation;

(3) the challenge of mitigating the environmental consequences associated with trans-basin water diversions are complex and involve many projects and measures (some of which are presently unidentifiable) and the costs for which will continue after projects of the Colorado River Storage Project in Utah are completed; and

(4) environmental mitigation associated with the development of the projects of the Colorado River Storage Project in the State of Utah are seriously in arrears.

**(b) [Purposes.]**—The purpose of this title is to establish an ongoing account to ensure that—

(1) the level of environmental protection, mitigation, and enhancement achieved in connection with projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah is preserved and maintained;

(2) resources are available to manage and maintain investments in fish and wildlife and recreation features of the projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah;

(3) resources are available to address known environmental impacts of the projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah for which no funds are being specifically authorized for appropriation and earmarked under this Act; and

(4) resources are available to address presently unknown environmental needs and opportunities for enhancement within the areas of the State of Utah affected by the projects identified in this Act and elsewhere in the Colorado River Storage Project. (106 Stat.4648)

**Sec. 402. [Utah Reclamation Mitigation and Conservation Account.]—**

**(a) [Establishment.]**—There is hereby established in the Treasury of the United States a Utah Reclamation Mitigation and Conservation Account (hereafter in this title referred to as the "Account"). Amounts in the Account shall be available for the purposes set forth in section 401(b).

**(b) [Deposits into the account.]**—Amounts shall be deposited into the Account as follows:

**(1) [State contributions.]**—In each of fiscal years 1994 through 2001, or until the fiscal year in which the project is declared substantially complete, whichever occurs first, a voluntary contribution of \$3,000,000 from the State of Utah.

**(2) [Federal contributions.]**—In each of fiscal years 1994 through 2001, or until the fiscal year in which the project is declared substantially complete, whichever occurs first, \$5,000,000 from amounts authorized to be appropriated by section 201, which shall be treated as an expense under section 8.

**(3) [Contributions from project beneficiaries.]**—(A) In each of fiscal years 1994 through 2001, or until the fiscal year in which the project is declared substantially complete in accordance with this Act, whichever occurs first, \$750,000 in non-Federal funds from the District.

(B) \$5,000,000 annually by the Secretary of Energy out of funds appropriated to the Western Area Power Administration, such expenditures to be considered nonreimbursable and nonreturnable.

(C) The annual contributions described in subparagraphs (A) and (B) shall be increased proportionally on March 1 of each year by the same percentage increase during the previous calendar year in the Consumer Price Index for urban consumers, published by the Department of Labor.

**(4) [Interest and unexpended funds.]**—(A) Any amount authorized and earmarked for fish, wildlife, or recreation expenditures which is appropriated but not obligated or expended by the Commission upon its termination under section 301.

(B) All funds annually appropriated to the Secretary for the Commission.

(C) All interest earned on amounts in the Account.

(D) Amounts not obligated or expended after the completion of a construction project and available pursuant to section 3010.

**(c) [Operation of the account.]**—(1) All funds deposited as principal in the Account shall earn interest in the amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Such interest shall be added to the principal of the Account until completion of the projects and features specified in the schedule in section 315. After completion of such projects and features, all interest earned on amounts remaining in or deposited to the principal of the Account shall be available to the Commission pursuant to subsection (c)(2) of this section.

(2) The Commission is authorized to administer and expend without further authorization and appropriation by Congress all sum deposited into the Account pursuant to subsections (b)(4)(D), (b)(3)(A), and (b)(3)(B), as well

October 30, 1992

UTE INDIAN WATER RIGHTS SETTLEMENT

3859

as interest not deposited to the principal of the Account pursuant to paragraph (1) of this subsection. The Commission may elect to deposit funds not expended under subsections (b)(4)(D), (b)(3)(A), and (b)(3)(B) into the Account as principal.

(3) All amounts deposited in the Account pursuant to subsections (b) (1) and (2), and any amount deposited as principal under paragraphs (c)(1) and (c)(2), shall constitute the principal of the Account. No part of the principal amount may be expended for any purpose.

**(d) [Administration by The Utah Division of Wildlife Resources.]**—(1) After the date on which the Commission terminates under section 301, the Utah Division of Wildlife Resources or its successor shall receive—

(A) all amounts contributed annually to the Account pursuant to section 402(b)(3)(B); and

(B) all interest on the principal of the Account, at the beginning of each year. The portion of the interest earned on the principal of the Account that exceeds the amount required to increase the principal of the Account proportionally on March 1 of each year by the percentage increase during the previous calendar year in the Consumer Price Index for urban consumers published by the Department of Labor, shall be available for expenditure by the Division in accordance with this section.

(2) The funds received by the Utah Division of Wildlife Resources under paragraph (1) shall be expended in a manner that fulfills the purposes of the Account established under this Act, in consultation with and pursuant to, a conservation plan and amendments thereto to be developed by the Utah Division of Wildlife Resources, in cooperation with the United States Forest Service, the Bureau of Land Management of the Department of the Interior, and the United States Fish and Wildlife Service.

(3) The funds to be distributed from the Account shall not be applied as a substitute for funding which would otherwise be provided or available to the Utah Division of Wildlife Resources.

**(e) [Audit by Inspector General.]**—The financial management of the Account shall be subject to audit by the Inspector General of the Department of the Interior. (106 Stat. 4650)

TITLE V—UTE INDIAN WATER RIGHTS SETTLEMENT

**Sec. 501. [Findings-Purpose.]**—(a) **[Findings.]**—The Congress finds the following—

(1) the unquantified Federal reserved water rights of the Ute Indian Tribe are the subject of existing claims and prospective lawsuits involving the United States, the State, and the District and numerous other water users in the Uinta Basin. The State and the Tribe negotiated, but did not implement, a compact to quantify the Tribe's reserved water rights.

(2) There are other unresolved Tribal claims arising out of an agreement dated September 20, 1965, where the Tribe deferred development of a portion of its reserved water rights for 15,242 acres of the Tribe's Group 5 Lands in order to facilitate the construction of the Bonneville Unit of the Central Utah Project. In exchange the United States undertook to develop substitute water for the benefit of the Tribe.

(3) It was intended that the Central Utah Project, through construction of the Upalco and Uintah Units (Initial Phase) and the Ute Indian Unit (Ultimate Phase) would provide water for growth in the Uinta Basin and for late season irrigation for both the Indians and non-Indian water users. However, construction of the Upalco and Uintah Units has not been undertaken, in part because the Bureau was unable to find adequate and economically feasible reservoir sites. The Ute Indian Unit has not been authorized by Congress, and there is no present intent to proceed with Ultimate Phase construction.

(4) Without the implementation of the plans to construct additional storage in the Uinta Basin, the water users (both Indian and non-Indian) continue to suffer water shortages and resulting economic decline.

**(b) [Purpose.]**—This Act and the proposed Revised Ute Indian Compact of 1990 are intended to—

- (1) quantify the Tribe's reserved water rights;
- (2) allow increased beneficial use of such water; and
- (3) put the Tribe in the same economic position it would have enjoyed had the features contemplated by the September 20, 1965 Agreement been constructed. (106 Stat. 4650)

**Sec. 502. [Provisions for payment to the Ute Indian Tribe.]—(a) [Bonneville Unit tribal credits.]**—(1) Commencing one year after the date of enactment of this Act, and continuing for fifty years, the Tribe shall receive from the United States 26 percent of the annual Bonneville Unit municipal and industrial capital repayment obligation attributable to thirty-five thousand five hundred acre-feet of water, which represents a portion of the Tribe's water rights that were to be supplied by storage from the Central Utah Project, but will not be supplied because the Upalco and Uintah units are not to be constructed.

(2)(A) Commencing in the year 2042, the Tribe shall collect from the District 7 percent of the then fair market value of thirty-five thousand five hundred acre-feet of Bonneville Unit agricultural water which has been converted to municipal and industrial water. The fair market value of such water shall be recalculated every five years.

(B) In the event thirty-five thousand five hundred acre-feet of Bonneville Unit converted agricultural water to municipal and industrial have not yet been marketed as of the year 2042, the Tribe shall receive 7 percent of the fair market value of the first thirty-five thousand five hundred acre-feet of

October 30, 1992

UTE INDIAN WATER RIGHTS SETTLEMENT

3861

such water converted to municipal and industrial water. The monies received by the Tribe under this title shall be utilized by the Tribe for governmental purposes, shall not be distributed per capita, and shall be used to enhance the educational, social, and economic opportunities for the Tribe.

**(b) [Bonneville Unit tribal waters.]**—The Secretary is authorized to make any unused capacity in the Bonneville Unit Strawberry Aqueduct and Collection System diversion facilities available for use by the Tribe. Unused capacity shall constitute capacity, only as available, in excess of the needs of the District for delivery of Bonneville Unit water and for satisfaction of minimum streamflow obligations established by this Act. In the event that the Tribe elects to place water in these components of the Bonneville Unit system, the Secretary and District shall only impose an operation and maintenance charge. Such charge shall commence at the time of the Tribe's use of such facilities. The operation and maintenance charge shall be prorated on a per acre-foot basis, but shall only include the operation and maintenance costs of facilities used by the Tribe and shall only apply when the Tribe elects to use the facilities. As provided in the Ute Indian Compact, transfers of certain Indian reserved rights water to different lands or different uses will be made in accordance with the laws of the State of Utah governing change or exchange applications.

**(c) [Election to return tribal waters.]**—Notwithstanding the authorization provided for in subparagraph (b), the Tribe may at any time elect to return all or a portion of the water which it delivered under subparagraph (b) for use in the Uinta Basin. Any such Uinta Basin use shall protect the rights of non-Indian water users existing at the time of the election. Upon such election, the Tribe will relinquish any and all rights which it may have acquired to transport such water through the Bonneville Unit facilities. (106 Stat. 4651)

**Sec. 503. [Tribal use of water.]—(a) [Ratification of revised Ute Indian Compact.]**—The Revised Ute Indian Compact of 1990, dated October 1, 1990, reserving waters to the Ute Indian Tribe and establishing the uses and management of such Tribal waters, is hereby ratified and approved, subject to re-ratification by the State and the Tribe. The Secretary is authorized to take all actions necessary to implement the Compact.

**(b) [The Indian Intercourse Act.]**—The provisions of section 2116 of the Revised Statutes (25 U.S.C. § 177) shall not apply to any water rights confirmed in the Compact. Nothing in this subsection shall be considered to amend, construe, supersede or preempt any State law, Federal law, interstate compact or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development and storage, regulation, allocation, conservation, exportation or quality of those waters.

October 30, 1992

3862

UTE INDIAN WATER RIGHTS SETTLEMENT

EXPLANATORY NOTE

**Reference in the Text.** Section 2116 of the Revised Statutes of the Indian Intercourse Act does not appear herein.

**(c) [Restriction on disposal of waters into the Lower Colorado River Basin.]**—None of the waters secured to the Tribe in the Revised Ute Indian Compact of 1990 may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin, below Lees Ferry, unless water rights within the Upper Colorado River Basin in the State of Utah held by non-Federal, non-Indian users could be so sold, exchanged, leased, used, or otherwise disposed of under Utah State law, Federal law, interstate compacts, or international treaty pursuant to a final, non-appealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact; *Provided, however,* That in no event shall such transfer of Indian water rights take place without the filing and approval of the appropriate applications with the Utah State Engineer pursuant to Utah State law.

**(d) [Use of water rights.]**—The use of the rights referred to in subsection (a) within the State of Utah shall be governed solely as provided in this section and the Revised Compact referred to in section 503(a). The Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Revised Compact off the Uintah and Ouray Indian Reservation. If the Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a State water right, but shall be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

**(e) [Rules of construction.]**—Nothing in titles II through VI of this Act or in the Revised Ute Indian Compact of 1990 shall—

- (1) constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservation;
- (2) constitute authority for the sale, exchange, lease, use, or other disposal of any Tribal water right outside the State of Utah; or
- (3) be deemed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Utah. (106 Stat. 4652)

October 30, 1992

UTE INDIAN WATER RIGHTS SETTLEMENT

3863

**Sec. 504. [Tribal farming operations.]**—Of the amounts authorized to be appropriated by section 501, \$45,000,000 is authorized for the Secretary to permit the Tribe to develop over a three-year period—

(1) a seven thousand five hundred acre farming/feed lot operation equipped with satisfactory off-farm and on-farm water facilities out of tribally owned lands and adjoining non-Indian lands now served by the Uintah Indian Irrigation Project;

(2) a plan to reduce the Tribe's expense on the remaining sixteen thousand acres of tribal land now served by the Uintah Indian Irrigation Project; and

(3) a fund to permit tribal members to upgrade their individual farming operations.

Any non-Indian lands acquired under this section shall be acquired from willing sellers and shall not be added to the reservation of the Tribe. (106 Stat. 4653)

**Sec. 505. [Reservoir stream, habitat and road improvements with respect to the Ute Indian Reservation.]**—(a) **[Repair of Cedarview Reservoir.]**—Of the amount authorized to be appropriated by section 201, \$5,000,000 shall be available to the Secretary, in cooperation with the Tribe, to repair the leak in Cedarview Reservoir in Dark Canyon, Duchesne County, Utah, so that the resultant surface area of the reservoir is two hundred and ten acres.

(b) **[Reservation stream improvements.]**—Of the amount authorized to be appropriated by section 201, \$10,000,000 shall be available for the Secretary, in cooperation with the Tribe and in consultation with the Commission, to undertake stream improvements to not less than 53 linear miles (not counting meanders) for the Pole Creek, Rock Creek, Yellowstone River, Lake Fork River, Uinta River, and Whiterocks River, in the State of Utah. Nothing in this authorization shall increase the obligation of the District to deliver more than 44,400 acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flows in the Uinta Basin.

(c) **[Bottle Hollow Reservoir.]**—Of the amount authorized to be appropriated by section 201, \$500,000 in an initial appropriation shall be available to permit the Secretary to clean the Bottle Hollow Reservoir on the Ute Indian Reservation of debris and trash resulting from a submerged sanitary landfill, to remove all non-game fish, and to secure minimum flow of water to the reservoir to make it a suitable habitat for a cold water fishery. The United States, and not the Tribe, shall be responsible for cleanup and all other responsibilities relating to the presently contaminated Bottle Hollow waters.

(d) **[Minimum stream flows.]**—As a minimum, the Secretary shall endeavor to maintain continuous releases into Rock Creek to maintain twenty-nine cubic feet per second during May through October and continuous releases into Rock Creek of twenty-three cubic feet per second

during November through April, at the reservation boundary. Nothing in this authorization shall increase the obligation of the District to deliver more than forty-four thousand four hundred acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flow in the Uinta Basin.

**(e) [Land transfer.]**—The Bureau shall transfer 315 acres of land to the Forest Service, located at the proposed site of the Lower Stillwater Reservoir as a wildlife mitigation measure.

**(f) [Recreation enhancement.]**—Of the amount authorized to be appropriated by section 201, \$10,000,000 shall be available for the Secretary, in cooperation with the Tribe, to permit the Tribe to develop, after consultation with the appropriate fish, wildlife, and recreation agencies, big game hunting, fisheries, campgrounds and fish and wildlife management facilities, including administration buildings and grounds on the Uintah and Ouray Reservation, in lieu of the construction of the Lower Stillwater Dam and related facilities.

**(g) [Municipal water conveyance system.]**—Of the amounts authorized to be appropriated in section 201, \$3,000,000 shall be available to the Secretary for participation by the Tribe in the construction of pipelines associated with the Duchesne County Municipal Water Conveyance System. (106 Stat. 4653)

**Sec. 506. [Tribal development funds.]—(a) [Establishment.]**—Of the amount authorized to be appropriated by section 201, there is hereby established to be appropriated a total amount of \$125,000,000 to be paid in three annual and equal installments to the Tribal Development Fund which the Secretary is authorized and directed to establish for the Tribe.

**(b) [Adjustment.]**—To the extent that any portion of such amount is contributed after the period described above or in amounts less than described above, the Tribe shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Fund, an adjustment representing the interest income as determined by the Secretary, in his sole discretion, that would have been earned on any unpaid amount.

**(c) [Tribal development.]**—The Tribe shall prepare a Tribal Development Plan for all or a part of this Tribal Development Fund. Such Tribal Development Plan shall set forth from time to time economic projects proposed by the Tribe which in the opinion of two independent financial consultants are deemed to be reasonable, prudent and likely to return a reasonable investment to the Tribe. The financial consultants shall be selected by the Tribe with the advice and consent of the Secretary. Principal from the Tribal Development Fund shall be permitted to be expended only in those cases where the Tribal Development Plan can demonstrate with specificity a compelling need to utilize principal in addition to income for the Tribal Development Plan.

**(d) [Environmental law compliance.]**—No funds from the Tribal Development Fund shall be obligated or expended by the Secretary for any

October 30, 1992

ENDANGERED SPECIES ACT AND NEPA

3865

economic project to be developed or constructed pursuant to subsection (c) of this section, unless the Secretary has complied fully with the requirements of applicable fish, wildlife, recreation, and environmental laws, including the National Environmental Policy Act of 1969 (43 U.S.C. § 4321 et seq.). (106 Stat. 4654)

EXPLANATORY NOTE

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

**Sec. 507. [Waiver of claims.]—(a) [General authority.]**—The Tribe is authorized to waive and release claims concerning or related to water rights as described below.

**(b) [Description of claims.]**—The Tribe shall waive, upon receipt of the section 504, 505, and 506 moneys, any and all claims relating to its water rights covered under the agreement of September 20, 1965, including claims by the Tribe that it retains the right to develop lands as set forth in the Ute Indian Compact and deferred in such agreement. Nothing in this waiver of claims shall prevent the Tribe from enforcing rights granted to it under this Act or under the Compact. To the extent necessary to effect a complete release of the claims, the United States concurs in such release.

**(c) [Resurrection of claims.]**—In the event the Tribe does not receive on a timely basis the moneys described in section 502, the Tribe is authorized to bring an action for an accounting against the United States, if applicable, in the United States Claims Court for moneys owed plus interest at 10 percent, and against the District, if applicable, in the United States District Court for the District of Utah for moneys owed plus interest at 10 percent. The United States and the District waive any defense based upon sovereign immunity in such proceedings. (106 Stat. 4655)

TITLE VI—ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

Notwithstanding any provision of titles II through V of this Act, nothing in such titles shall be interpreted as modifying or amending the provisions of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). (106 Stat. 4655)

October 30, 1992

3866

LEADVILLE MINE DRAINAGE TUNNEL

TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

**Sec. 701. [Authorization.]**—The Secretary is authorized to construct, operate, and maintain a water treatment plant, including the disposal of sludge produced by said treatment plant as appropriate, and to install concrete lining on the rehabilitated portion of the Leadville Mine Drainage Tunnel, in order that water flowing from the Leadville Tunnel may meet water quality standards, and to contract with the Colorado Division of Wildlife to monitor concentrations of heavy metal contaminants in water, stream sediment, and aquatic life in the Arkansas River downstream of the water treatment plant.

**Sec. 702. [Costs nonreimbursable.]**—Construction, operation, and maintenance costs of the works authorized by this title shall be nonreimbursable.

**Sec. 703. [Operation and maintenance.]**—The Secretary shall be responsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.

**Sec. 704. [Appropriations authorized.]**—There is hereby authorized to be appropriated beginning October 1, 1989, for construction of a water treatment plant for water flowing from the Leadville Mine Drainage Tunnel, including sludge disposal, and concrete lining the rehabilitated portion of the tunnel, the sum of \$10,700,000 (October 1988 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation and maintenance of the works authorized by this title, including but not limited to \$1,250,000 which shall be for a program to be conducted by the Colorado Division of Wildlife to monitor heavy metal concentrations in water, stream sediment, and aquatic life in the Arkansas River.

**Sec. 705. [Limitation.]**—The treatment plant authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

**Sec. 706. [Design and operation notification.]**—Prior to the initiation of construction and during construction of the works authorized by section 701, the Secretary shall submit the plans for design and operation of the works to the Administrator of the Environmental Protection Agency and the State of Colorado to obtain their views on the design and operation plans. After such review and consultation, the Secretary shall notify the President pro tempore of the Senate and the Speaker of the House of Representatives that the discharge from the works to be constructed will meet the requirements set forth in Federal Facilities Compliance Agreement Number FFCA 89-1, entered into by the Bureau of Reclamation and the Environmental Protection

October 30, 1992

LEADVILLE MINE DRAINAGE TUNNEL

3867

Agency on February 7, 1989, and in National Pollutant Discharge Elimination System permit Number CO 0021717 issued to the Bureau of Reclamation in 1975 and reissued in 1979 and 1981. (106 Stat. 4656)

**Sec. 707. [~~Fish and wildlife restoration—Public consultation—Proposed restoration program to the Congress.~~]**—(a) The Secretary is authorized, in consultation with the State of Colorado, to formulate and implement, subject to the terms of subsection (b) of this section, a program for the restoration of fish and wildlife resources of those portions of the Arkansas River basin impacted by the effluent discharged from the Leadville Mine Drainage Tunnel. The formulation of the program shall be undertaken with appropriate public consultation.

(b) Prior to implementing the fish and wildlife restoration program, the Secretary shall submit a copy of the proposed restoration program to the President pro tempore of the Senate and the Speaker of the House of Representatives for a period of not less than sixty days. (106 Stat. 4655)

**Sec. 708. [~~Water quality restoration—Authorization—Demonstration projects—Consultation requirements—Cost sharing—Propose project plans to the Congress—Liability for hazardous substances—Appropriations.~~]**—(a) The Secretary is authorized, in consultation with the State of Colorado, the Administrator of the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and impacts attributed to mining-related and other development in the Upper Arkansas River basin, to develop corrective action plans, and to implement corrective action demonstration projects. Neither the Secretary nor any person participating in a corrective action demonstration project shall be liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act for costs or damages as a result of actions taken or omitted in the course of implementing an approved work plan developed under this section; *Provided*, That this subsection shall not preclude liability for costs or damages which result from negligence on the part of such persons. The Secretary shall have no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act. For the purpose of this section, the term "Upper Arkansas River basin" means the Arkansas River hydrologic basin in Colorado extending from Pueblo Dam upstream to its headwaters.

(b) The development of all corrective action plans and subsequent corrective action demonstration projects shall be undertaken with appropriate public involvement pursuant to a public participation plan, consistent with regulations promulgated under the Federal Water Pollution Control Act, developed by the Secretary in consultation with the State of Colorado and the Administrator of the Environmental Protection Agency.

October 30, 1992

3868

LAKE MEREDITH SALINITY CONTROL

(c) The Secretary shall arrange for cost sharing with the State of Colorado and for the use of non-Federal funds and in-kind services where possible. The Secretary is authorized to fund all State costs required to conduct investigations and develop corrective action plans. The Federal share of costs associated with corrective action plans shall not exceed 60 percent.

(d) Prior to implementing any corrective action demonstration project, the Secretary shall submit a copy of the proposed project plans to the President pro tempore of the Senate and the Speaker of the House of Representatives.

(e) Nothing in this title shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to the discharge or release of hazardous substances, pollutants, or contaminants, as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

(f) There is authorized to be appropriated such sums as may be required to fulfill the provisions of sections 707 and 708 of this title. (106 Stat. 4655-4657)

EXPLANATORY NOTE

**References in the Text.** The Compensation, and Liability Act referenced above does not appear herein.

TITLE VIII—LAKE MEREDITH SALINITY CONTROL PROJECT,  
TEXAS AND NEW MEXICO

**Sec. 801. [Authorization to construct and test.]**—The Secretary is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788 [*sic*], and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. The principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

EXPLANATORY NOTE

**Editor's Note.** The Stat. reference "32 Stat. 788" in that reference appears to be in error. "32 Stat. 388" is the correct Stat. reference.

October 30, 1992

LAKE MEREDITH SALINITY CONTROL

3869

**Sec. 802. [Construction contract with the Canadian River Municipal Water Authority.]—(a) [Authority to contract.]**—The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas (hereafter in this title the "Authority") for the design and construction management of project facilities by the Bureau of Reclamation and for the payment of construction costs by the Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Authority.

**(b) [Construction contingent on contract.]**—Construction of the project shall not be commenced until a contract has been executed by the Secretary with the Authority, and the State of New Mexico has granted the necessary permits for the project facilities.

**Sec. 803. [Project costs.]—(a) [Canadian River Municipal Water Authority Share.]**—All costs of construction of project facilities shall be advanced by the Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 802 of this title, these funds shall be advanced on a schedule mutually acceptable to the Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acquisition activities. (106 Stat. 4658)

**(b) [Federal share.]**—All project costs for design preparation, and construction management shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement, except that the Federal contribution shall not exceed 33 per centum of the total project costs.

**Sec. 804. [Construction and control.]—(a) [Preconstruction.]**—The Secretary shall, upon entering into the contract specified in section 802 with the Authority, proceed with preconstruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

**(b) [Termination of construction.]**—At any time following the first advance of funds, the Authority may request that the Secretary terminate activities then in progress, and such request shall be binding upon the Secretary, except that, upon termination of construction pursuant to this section, the Authority shall reimburse to the Secretary a sum equal to 67 per centum of all costs incurred by the Secretary in project verification, design and construction management, reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

**(c) [Transfer of control.]**—Upon completion of construction and testing of the project, or upon termination of activities at the request of the Authority, the Secretary shall transfer the care, operation, and maintenance of the project

October 30, 1992

3870

CEDAR BLUFF WATER SUPPLY

works to the Authority or to a bona fide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances of the funds advanced, assign to the Authority or the bona fide entity the rights to any contract in force, convey to the Authority or the bona fide entity any real estate, easements or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds. (106 Stat. 4658)

**Sec. 805. [Transfer of title.]**—Title to any facilities constructed under the authority of this title shall remain with the United States.

**Sec. 806. [Authorization.]**—There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this title, except that the total Federal contribution to the cost of the activities undertaken under the authority of this title shall not exceed 33 per centum. (106 Stat. 4658)

TITLE IX—CEDAR BLUFF UNIT, KANSAS, WATER SUPPLY

**Sec. 901. [Authorization—Designated operating pool—Joint-use pool.]**—The Secretary, pursuant to the provisions of the Memorandum of Understanding between the Bureau of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District Number 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including reallocation of the conservation capacity of the Cedar Bluff Reservoir, to create:

(a) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for groundwater recharge for environmental, domestic, municipal and industrial uses, and for other purposes; and

(b) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, water sales, fish, wildlife, and recreation purposes; and for other purposes.

**Sec. 902. [Contract for water use.]**—The Secretary is authorized to enter into a contract with the State of Kansas for the sale, use, and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool, except that, the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to irrigate lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

**Sec. 903. [Contract for repayment—Operation, maintenance, and replacement costs—Title to buildings fixtures, and equipment—Related water rights.]**—(a) The Secretary is authorized to enter into a contract with the State of Kansas, accepting a payment of \$365,424, and the State's commitment

October 30, 1992

SOUTH DAKOTA WATER PLANNING

3871

to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir, as full satisfaction of reimbursable costs associated with irrigation of the Cedar Bluff Unit, including the Cedar Bluff Irrigation District's obligations under Contract Number 0-07-70-WO064. After the reformulation of the Cedar Bluff Unit authorized by this title, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operation, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law. Once all such operation, maintenance and replacement charges or reimbursable obligations are satisfied, any additional revenues shall be retained by the State of Kansas.

(b) The Secretary is authorized to transfer title of the buildings, fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

**Sec. 904. [Transfer of district headquarters.]**—The Secretary is authorized to transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached.

**Sec. 905. [Liability and indemnification.]**—The transferee of any interest conveyed pursuant to this title shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

**Sec. 906. [Additional actions.]**—The Secretary is authorized to take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 901 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit. (106 Stat. 4660)

TITLE X—SOUTH DAKOTA WATER PLANNING STUDIES

**Sec. 1001. [Authorization for South Dakota Water Planning Studies.]**—(a) The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may perform the planning studies necessary (including a needs assessment) to determine the feasibility and estimated cost

October 30, 1992

3872 RECLAMATION PROJECTS AND AUTHORIZATION ACT

of incorporating all or portions of the Rosebud Sioux Reservation in South Dakota into the service areas of the rural water systems authorized by the Mni Wiconi Project Act of 1988 (Public Law 100-516, 102 Stat. 2567).

(b) Section 3(f) of Public Law 100-516 is hereby amended to insert a new subsection (3) as follows:

"(3) Notwithstanding subsections (1) and (2), the Secretary is authorized and directed to obligate up to \$1.466 million of the funds appropriated under Public Law 100-516 to construct an interim water system for the White Clay and Wakpamni Districts of the Pine Ridge Indian Reservation as soon as the final engineering report for that segment of the Oglala Rural Water Supply System has been completed and the requirements of the National Environmental Policy Act of 1969 for that segment of the System have been met." (106 Stat. 4661)

EXPLANATORY NOTE

**References in the Text.** Mni Wiconi Project Act of 1988, Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2567) referenced above appears in Volume V at page 3593. The National Environmental Policy Act of 1969, Act of January 1, 1970 (Public Law 91-190, 83 Stat. 852) referenced above appears in Volume IV at page 2492.

TITLE XI—SALTON SEA RESEARCH PROJECT, CALIFORNIA

**Sec. 1101. [Research project.]—(a) [Research project.]**—The Secretary of the Interior, acting through the Bureau of Reclamation, shall conduct a research project for the development of a method or combination of methods to reduce and control salinity, provide endangered species habitat, enhance fisheries, and protect human recreational values in inland water bodies. Such research shall include testing an enhanced evaporation system for treatment of saline waters, and studies regarding in-water segregation of saline waters and of dilution from other sources. The project shall be located in the area of the Salton Sea of Southern California.

**(b) [Cost share.]**—The non-Federal share of the cost of the project referred to in subsection (a) shall be 50 percent of the cost of the project.

**(c) [Report.]**—Not later than September 30, 1996, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives regarding the results of the project referred to in subsection (a).

**(d) [Authorization of appropriations.]**—There is authorized to be appropriated \$10,000,000 to carry out the purposes of this title. (106 Stat. 4661)

October 30, 1992

RECLAMATION PROJECTS AND AUTHORIZATION ACT 3873

TITLE XII—AMENDMENT TO SABINE RIVER COMPACT

**Sec. 1201. [Consent to amendment to Sabine River Compact.]**—The consent of Congress is given to the amendment, described in section 1203, to the interstate compact, described in section 1202, relating to the waters of the Sabine River and its tributaries.

**Sec. 1202. [Compact described.]**—The compact referred to in the previous section is the compact between the States of Texas and Louisiana, and consented to by Congress in the Act of August 10, 1954 (chapter 668; 68 Stat. 690; Public Law 85-78).

EXPLANATORY NOTE

**References in the Text.** The Act of August 10, 1954 (ch. 668, 68 Stat. 690) page 1174. Section 1, as amended by the Act of July 23, 1977, appears in Supplement I at page S226. Amendments and annotations also appear in Supplement II at page S870. Public Law 85-78 does not appear herein.

**Sec. 1203. [Amendment.]**—The amendment referred to in section 1201 strikes "One of the Louisiana members shall be ex officio the Director of the Louisiana Department of Public Works; the other Louisiana member shall be a resident of the Sabine Watershed and shall be appointed by the Governor of Louisiana for a term of four years: *Provided*, That the first member so appointed shall serve until June 30, 1958." in article VII(c) and inserts "The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor." (106 Stat. 4662, 43 U.S.C. § 1521)

TITLE XIII—SALT-GILA AQUEDUCT, ARIZONA

**Sec. 1301. [Designation.]**—The Salt-Gila Aqueduct of the Central Arizona Project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. § 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

**Sec. 1302. [References.]**—Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in section 1301 hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

TITLE XIV—VERMEJO PROJECT RELIEF, NEW MEXICO

Section 401 of the Act of December 19, 1980 (94 Stat. 3227), is amended by striking the text that begins: "Transfer of project facilities to the district shall be

October 30, 1992

3874 RECLAMATION PROJECTS AND AUTHORIZATION ACT

without . . ." and ends with ". . . shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the written consent of the Vermejo Conservancy District to amend contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract Number 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1992, and expiring January 17, 1995, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract Number 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project." (106 Stat. 4662)

TITLE XV—SAN LUIS VALLEY PROTECTION, COLORADO

**Sec. 1501. [Permit to withdraw water from San Luis Valley, Colorado, prohibited.]—**(a) No agency or instrumentality of the United States shall issue any permit, license, right-of-way, grant, loan or other authorization or assistance for any project or feature of any project to withdraw water from the San Luis Valley, Colorado, for export to another basin in Colorado or export to any portion of another State, unless the Secretary of the Interior determines, after due consideration of all findings provided by the Colorado Water Conservation Board, that the project will not:

(1) increase the costs or negatively affect operation of the Closed Basin Project;

(2) adversely affect the purposes of any national wildlife refuge or Federal wildlife habitat area withdrawal located in the San Luis Valley, Colorado; or

(3) adversely affect the purposes of the Great Sand Dunes National Monument, Colorado.

(b) Nothing in this title shall be construed to alter, amend, or limit any provision of Federal or State law that applies to any project or feature of a project to withdraw water from the San Luis Valley, Colorado, for export to

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3875

another basin in Colorado or another State. Nothing in this title shall be construed to limit any agency's authority or responsibility to reject, limit, or condition any such project on any basis independent of the requirements of this title.

**Sec. 1502. [Judicial Review.]**—The Secretary's findings required by this title shall be subject to judicial review in the United States district courts.

**Sec. 1503. [Costs.]**—The direct and indirect costs of the findings required by section 1501 of this title shall be paid in advance by the project proponent under terms and conditions set by the Secretary.

**Sec. 1504. [Disclaimers.]**—(a) Nothing in this title shall constitute either an expressed or implied reservation of water or water rights.

(b) Nothing in this title shall be construed as establishing a precedent with regard to any other Federal reclamation project. (106 Stat. 4663)

TITLE XVI—RECLAMATION WASTEWATER AND  
GROUNDWATER STUDIES

An act directing the Secretary to undertake a program to investigate and identify opportunities for reclamation and reuse of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters, for the design and construction of demonstration and permanent facilities to reclaim and reuse wastewater, and to conduct research, including desalting, for the reclamation of wastewater and naturally impaired ground and surface waters. (Act of October 30, 1992, Public Law 102-575, Title XVI, 106 Stat. 4664; as amended by the Act of November 2, 1994, Public Law 103-437, Sec. 16(a)(2), 108 Stat. 4594; and the Reclamation Recycling and Water Conservation Act of October 9, 1996, Public Law 104-266, 110 Stat. 3289; 43 U.S.C. § 390h et seq.)

**Sec. 1601. [Short title.]**—This title may be referred to as the "Reclamation Wastewater and Groundwater Study and Facilities Act".

**Sec. 1602. [General authority.]**—(a) **[Program established.]**—The Secretary of the Interior (hereafter "Secretary"), acting pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and Acts amendatory thereof and supplementary thereto (hereafter "Federal reclamation laws"), is directed to undertake a program to investigate and identify opportunities for reclamation and reuse of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters, for the design and construction of demonstration and permanent facilities to reclaim and reuse wastewater, and to conduct research, including desalting, for the reclamation of wastewater and naturally impaired ground and surface waters.

(b) **[States included.]**—Such program shall be limited to the States and areas referred to in section 1 of the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) as amended.

October 30, 1992

3876 WASTEWATER AND GROUNDWATER STUDIES

**(c) [Agreements and regulations.]**—The Secretary is authorized to enter into such agreements and promulgate such regulations as may be necessary to carry out the purposes and provisions of this title.

**(d) [San Luis Unit of Central Valley Project, California.]**—The Secretary shall not investigate, promote or implement, pursuant to this title, any project intended to reclaim and reuse agricultural wastewater generated in the service area of the San Luis Unit of the Central Valley Project, California, except those measures recommended for action by the San Joaquin Valley Drainage Program in the report entitled A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley (September 1990).

**Sec. 1603. [Appraisal investigations.]—(a) [Purposes; recommendations.]**—The Secretary shall undertake appraisal investigations to identify opportunities for water reclamation and reuse. Each such investigation shall take into account environmental considerations as provided by the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) and regulations issued to implement the provisions thereof, and shall include recommendations as to the preparation of a feasibility study of the potential reclamation and reuse measures.

EXPLANATORY NOTE

**Reference in the Text.** The National 852, as amended) referenced above appears in Environmental Policy Act of 1969, Act of Volume IV at page 2492. January 1, 1970 (Public Law 92-190, 83 Stat.

**(b) [Matters to be considered.]**—Appraisal investigations undertaken by the Secretary or the non-Federal project sponsor pursuant to this title shall consider, among other things—

- (1) all potential uses of reclaimed water, including, but not limited to, environmental restoration, fish and wildlife, groundwater recharge, municipal, domestic, industrial, agricultural, power generation, and recreation;
- (2) the current status of water reclamation technology and opportunities for development of improved technologies;
- (3) measures to stimulate demand for and eliminate obstacles to use of reclaimed water, including pricing;
- (4) measures to coordinate and streamline local, State and Federal permitting procedures required for the implementation of reclamation projects; and
- (5) measures to identify basic research needs required to expand the uses of reclaimed water in a safe and environmentally sound manner.

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3877

**(c) [Consultation and cooperation.]**—The Secretary shall consult and cooperate with appropriate State, regional, and local authorities during the conduct of each appraisal investigation conducted pursuant to this title.

**(d) [Nonreimbursable costs.]**—Costs of such appraisal investigations shall be nonreimbursable. (106 Stat. 4664, 110 Stat. 3295)

EXPLANATORY NOTE

**1996 Amendment.** Section 3 of the Act of October 9, 1996 (Public Law 104-266, 110 Stat. 3295) amended section 1603(b) in the matter preceding paragraph (1) by inserting "by the Secretary or the non-Federal project sponsor" after "undertaken". The 1996 Act appears in Volume V at page 4087.

**Sec. 1604. [Feasibility studies.]—(a) [Authorization.]**—The Secretary is authorized to participate with appropriate Federal, State, regional, and local authorities in studies to determine the feasibility of water reclamation and reuse projects recommended for such study pursuant to section 1603 of this title. The Federal share of the costs of such feasibility studies shall not exceed 50 per centum of the total, except that the Secretary may increase the Federal share of the costs of such feasibility study if the Secretary determines, based upon a demonstration of financial hardship on the part of the non-Federal participant, that the non-Federal participant is unable to contribute at least 50 per centum of the costs of such study. The Secretary may accept as part of the non-Federal cost share the contribution of such in-kind services by the non-Federal participant that the Secretary determines will contribute substantially toward the conduct and completion of the study.

**(b) [Project costs—Reimbursement.]**—The Federal share of feasibility studies, including those described in sections 1606 and 1608 through 1610 of this title, shall be considered as project costs and shall be reimbursed in accordance with the Federal reclamation laws, if the project studied is implemented.

**(c) [Matters to be considered.]**—In addition to the requirements of other Federal laws, feasibility studies conducted by the Secretary or the non-Federal project sponsor under this title shall consider, among other things—

- (1) near- and long-term water demand and supplies in the study area;
- (2) all potential uses for reclaimed water;
- (3) at least two alternative measures or technologies available for water reclamation, distribution, and reuse for the project under consideration;
- (4) public health and environmental quality issues associated with use of reclaimed water;
- (5) whether development of the water reclamation and reuse measures under study would—
  - (A) reduce, postpone, or eliminate development of new or expanded water supplies,

3878 WASTEWATER AND GROUNDWATER STUDIES

(B) reduce or eliminate the use of existing diversions from natural watercourses or withdrawals from aquifers, or

(C) reduce the demand on existing Federal water supply facilities;

(6) the market or dedicated use for reclaimed water in the project's service area; and

(7) the financial capability of the non-Federal project sponsor to fund its proportionate share of the project's construction costs on an annual basis. (106 Stat. 4665, 110 Stat. 3295; 43 U.S.C. § 390h-2(c).)

EXPLANATORY NOTE

**1996 Amendment.** Section 4 of the Act of October 9, 1996 (Public Law 104-266, 110 Stat. 3295) amended section 1604(c) as follows: (1) in the matter preceding paragraph (1), by striking "authorized" and inserting "conducted by the Secretary or the non-Federal project sponsor";

(2) in paragraph (3)–

(A) by inserting "at least two alternative" after "(3)",

(B) by striking "and" after "measure" and inserting "or", and

(C) by inserting "for the project under consideration" after "reuse";

(3) in paragraph (4), by striking "and," at the end;

(4) in paragraph (5), by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting, "or", and by adding at the end the following: "(C) reduce the demand on existing Federal water supply facilities"; and

(5) by adding at the end the following:

"(6) the market or dedicated use for reclaimed water in the project's service area; and "(7) the financial capability of the non-Federal project sponsor to fund its proportionate share of the project's construction costs on an annual basis.". The 1996 Act appears in Volume V at page 4087.

**Sec. 1605. [Research and demonstration projects.]–(a) [Authorization.]–**The Secretary is authorized to conduct research and to construct, operate, and maintain cooperative demonstration projects for the development and demonstration of appropriate treatment technologies for the reclamation of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters. The Federal share of the costs of demonstration projects shall not exceed 50 per centum of the total cost including operation and maintenance. Rights to inventions developed pursuant to this section shall be governed by the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (Public Law 96-480) as amended by the Technology Transfer Act of 1986 (Public Law 99-502).

**(b) [Cooperation with City of Long Beach and certain water districts; Cost share.]–**

(1) The Secretary, in cooperation with the City of Long Beach, the Central Basin Municipal Water District, and the Metropolitan Water District of Southern California may participate in the design, planning, and

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3879

construction of the Long Beach Desalination Research and Development Project in Los Angeles County, California.

(2) The Federal share of the cost of the project described in paragraph (1) shall not exceed 50 percent of the total.

(3) The Secretary shall not provide funds for the operation or maintenance of the project described in paragraph (1).

**(c) [Cooperation with Southern Nevada Water Authority; Cost share.]—**

(1) The Secretary, in cooperation with the Southern Nevada Water Authority, may participate in the design, planning, and construction of the Las Vegas Area Shallow Aquifer Desalination Research and Development Project in Clark County, Nevada.

(2) The Federal share of the cost of the project described in paragraph (1) shall not exceed 50 percent of the total.

(3) The Secretary shall not provide funds for the operation or maintenance of the project described in paragraph (1).

**(d) [Cost share.]—**A Federal contribution in excess of 25 percent for a project under this section may not be made until after the Secretary determines that the project is not feasible without such Federal contribution. (106 Stat. 4665; 110 Stat. 3295; 43 U.S.C. 390h-3.)

EXPLANATORY NOTES

**1996 Amendment.** Section 5 of the Act of October 9, 1996 (Public Law 104-266, 110 Stat. 3295) amended section 1605 as follows: (1) by designating the existing text as subsection (a); and (2) by adding at the end subsections (b), (c), and (d) as they appear above. The 1996 Act appears in Volume V at page 4087.

**References in Text.** The Stevenson-Wydler Technology Innovation Act of 1980, Act of October 21, 1980 (Public Law 96-480, 94 Stat. 2311, as amended) referenced above does not appear herein.

The Federal Technology Transfer Act of 1986, Act of October 20, 1986 (Public Law 99-502, 100 Stat. 1785d) referenced above does not appear herein.

**Sec. 1606. [Southern California Comprehensive Water Reclamation and Reuse Study.]—(a) [Authorization.]—**The Secretary is authorized to conduct a study to assess the feasibility of a comprehensive water reclamation and reuse system for Southern California. For the purpose of this title, the term ‘Southern California’ means those portions of the counties of Imperial, Los Angeles, Orange, San Bernadino, Riverside, San Diego, and Ventura within the south coast and Colorado River hydrologic regions as defined by the California Department of Water Resources.

**(b) [Cooperation with State; Cost share.]—**The Secretary shall conduct the study authorized by this section in cooperation with the State of California

October 30, 1992

3880 WASTEWATER AND GROUNDWATER STUDIES

and appropriate local and regional entities. The Federal share of the costs associated with this study shall not exceed 50 per centum of the total.

**(c) [Report].**—The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives not later than six years after appropriation of funds authorized by this title. (106 Stat. 4666; Act of Nov. 2, 1994, Public Law 103-437, Sec. 16(a)(2), 108 Stat. 4594; Act of June 3, 1995, Public Law 104-14, 109 Stat. 186)

EXPLANATORY NOTES

**1994 Amendments.** Subsection 16(a)(2) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4594) substituted "Natural Resources" for "Interior and Insular Affairs" before "of the House" in subsection 1606(c) above and subsections 1608(c), 1609(c), 1610(c), 1611(c), and 1616(c), now 1632(c), below. Extracts from the 1994 Act appear in Volume V at page 4061.

1(a)(8) of the Act of June 3, 1995 (Public Law 104-14, 109 Stat. 186) provided that "the Committee on Natural Resources of the House of Representatives shall be treated as referring to the Committee on Resources of the House of Representatives." Subsections 1606(c), 1608(c), 1609(c), 1610(c), 1611(c), and 1616(c), now 1632(c), are edited accordingly. The 1995 Act does not appear herein.

**Change of Name.** Subsequently, section

**Sec. 1607. [San Jose Area Water Reclamation and Reuse Program.]—(a) [Authorization.]**—The Secretary, in cooperation with the city of San Jose, California, and the Santa Clara Valley Water District, and local water suppliers, shall participate in the planning, design and construction of demonstration and permanent facilities to reclaim and reuse water in the San Jose metropolitan service area.

**(b) [Cost share.]**—The Federal share of the costs of the facilities authorized by subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project. (106 Stat. 4666)

**Sec. 1608. [Phoenix Metropolitan Water Reclamation Study and Program.]—(a) [Authorization.]**—The Secretary, in cooperation with the city of Phoenix, Arizona, shall conduct a feasibility study of the potential for development of facilities to utilize fully wastewater from the regional wastewater treatment plant for direct municipal, industrial, agricultural, and environmental purposes, groundwater recharge and direct potable reuse in the Phoenix metropolitan area, and in cooperation with the city of Phoenix design and construct facilities for environmental purposes, ground water recharge and direct potable reuse.

**(b) [Cost share.]**—The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total. The Federal share of the costs associated with the project described in subsection (a) shall not

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3881

exceed 25 per centum of the total. The Secretary shall not provide funds for operation or maintenance of the project.

(c) **[Report.]**—The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives not later than two years after appropriation of funds authorized by this title. (106 Stat. 4666, 108 Stat. 4594, 109 Stat. 186)

**Sec. 1609. [Tucson Area Water Reclamation Study.]—(a) [Authorization.]**—The Secretary, in cooperation with the State of Arizona and appropriate local and regional entities, shall conduct a feasibility study of comprehensive water reclamation and reuse system for Southern Arizona. For the purpose of this section, the term ‘Southern Arizona’ means those portions of the counties of Pima, Santa Cruz, and Pinal within the Tucson Active Management Hydrologic Area as defined by the Arizona Department of Water Resources.

(b) **[Cost share.]**—The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total.

(c) **[Report.]**—The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives not later than four years after appropriation of funds authorized by this title.

**Sec. 1610. [Lake Cheraw Water Reclamation and Reuse Study.]—(a) [Authorization.]**—The Secretary is authorized, in cooperation with the State of Colorado and appropriate local and regional entities, to conduct a study to assess and develop means of reclaiming the waters of Lake Cheraw, Colorado, or otherwise ameliorating, controlling and mitigating potential negative impacts of pollution in the waters of Lake Cheraw on groundwater resources or the waters of the Arkansas River.

(b) **[Cost share.]**—The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total.

(c) **[Report.]**—The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives not later than two years after appropriation of funds authorized by this title. (106 Stat. 4667, 108 Stat. 4594, 109 Stat. 186)

**Sec. 1611. [San Francisco Area Water Reclamation Study.]—(a) [Authorization.]**—The Secretary, in cooperation with the city and county of San Francisco, shall conduct a feasibility study of the potential for development of demonstration and permanent facilities to reclaim water in the San Francisco area for the purposes of export and reuse elsewhere in California.

(b) **[Cost share.]**—The Federal share of the costs of the study authorized by this section shall not exceed 50 per centum of the total.

October 30, 1992

3882 WASTEWATER AND GROUNDWATER STUDIES

(c) **[Report.]**—The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives not later than five years after appropriation of funds authorized by this title. (106 Stat. 4667, 108 Stat. 4594, 109 Stat. 186)

EXPLANATORY NOTE

**1996 Amendments.** Section 6 of the Act of October 9, 1996, (Public Law 104-266, 110 Stat. 3290) amended subsection 1611(c) by striking "four" and inserting "five". The 1996 Act appears in Volume V at page 4087.

**Sec. 1612. [San Diego Area Water Reclamation Program.]—(a) [Authorization.]**—The Secretary, in cooperation with the city of San Diego, California[,] or its successor agency in the management of the San Diego Area Wastewater Management District, shall participate in the planning, design and construction of demonstration and permanent facilities to reclaim and reuse water in the San Diego metropolitan service area.

(b) **[Cost share.]**—The Federal share of the costs of the facilities authorized by subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project.

**Sec. 1613. [Los Angeles Area Water Reclamation and Reuse Project.]—(a) [Authorization]**—The Secretary is authorized to participate with the city and county of Los Angeles, State of California, West Basin Municipal Water District, and other appropriate authorities, in the design, planning, and construction of water reclamation and reuse projects to treat approximately one hundred and twenty thousand acre-feet per year of effluent from the city and county of Los Angeles, in order to provide new water supplies for industrial, environmental, and other beneficial purposes, to reduce the demand for imported water, and to reduce sewage effluent discharged into Santa Monica Bay.

(b) **[Cost share.]**—The Secretary's share of costs associated with the project described in subsection (a) of this section shall not exceed 25 per centum of the total. The Secretary shall not provide funds for operation or maintenance of the project. (106 Stat. 4667)

**Sec. 1614. [San Gabriel Basin Demonstration Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the Metropolitan Water District of Southern California and the Main San Gabriel Water Quality Authority or a successor public agency, is authorized to participate in the design, planning and construction of a conjunctive-use facility designed to improve the water quality in the San Gabriel groundwater basin and allow the utilization of the basin as a water storage facility; *Provided*, That this authority shall not be construed to limit the authority of the United States under any

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3883

other Federal statute to pursue remedial actions or recovery of costs for work performed pursuant to this subsection.

**(b) [Cost share.]**—The Secretary's share of costs associated with the project described in subsection (a) shall not exceed 25 per centum of the total. The Secretary shall not provide funds for the operation or maintenance of the project. (106 Stat. 4668)

**Sec. 1615. [North San Diego County Area Water Recycling Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the North San Diego County Area Water Recycling Project, consisting of projects to reclaim and reuse water within service areas of the San Elijo Joint Powers Authority, the Leucadia County Water District, the City of Carlsbad, and the Olivenhain Municipal Water District, California.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). Act of October 9, 1996, 110 Stat. 3290; 43 U.S.C. § 390h-12a.)

**Sec. 1616. [Calleguas Municipal Water District Recycling Project.]—**

**(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Calleguas Municipal Water District Recycling Project to reclaim and reuse water in the service area of the Calleguas Municipal Water District in Ventura County, California.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12b.)

**Sec. 1617. [Central Valley Water Recycling Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Central Valley Water Recycling Project to reclaim and reuse water in the service areas of the Central Valley Reclamation Facility and the Salt Lake County Water Conservancy District in Utah.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). Act of October 9, 1996, 110 Stat. 3291; 43 U.S.C. 390h-12c.)

**Sec. 1618. [St. George Area Water Recycling Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and

3884 WASTEWATER AND GROUNDWATER STUDIES

construction of the St. George Area Water Recycling Project to reclaim and reuse water in the service area of the Washington County Water Conservancy District in Utah.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12d.)

**Sec. 1619. [Watsonville Area Water Recycling Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the City of Watsonville, California, is authorized to participate in the design, planning, and construction of the Watsonville Area Water Recycling Project to reclaim and reuse water in the Pajaro Valley in Santa Cruz County, California.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12e.)

**Sec. 1620. [Southern Nevada Water Recycling Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Southern Nevada Water Recycling Project to reclaim and reuse water in the service area of the Southern Nevada Water Authority in Clark County, Nevada.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12f.)

**Sec. 1621. [Albuquerque Metropolitan Area Water Reclamation and Reuse project.]—(a) [Authorization.]**—The Secretary, in cooperation with the city of Albuquerque, New Mexico, is authorized to participate in the planning, design, and construction of the Albuquerque Metropolitan Area Water Reclamation and Reuse project to reclaim and reuse industrial and municipal wastewater and reclaim and use naturally impaired ground water and nonpotable surface water in the Albuquerque metropolitan area.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (Act of October 9, 1996, 110 Stat. 3292; Act of October 13, 1997; 111 Stat. 1339; 43 U.S.C. § 390h-12g.)

EXPLANATORY NOTE

**1997 Amendment.** Section 506 of the Act of October 13, 1997 (111 Stat. 1339) amended Section 1621 by—

(1) striking "study" in the section title and in subsection (a), and inserting "project" into the title and in subsection (a);

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3885

- (2) inserting in subsection (a) "planning, design, and construction of the" following "to participate in the"; and
- (3) inserting in subsection (a) "and nonpotable surface water" following "impaired ground water". Extracts from the 1997 Act appear in Volume V at page 4114.

**Sec. 1622. [El Paso Water Reclamation and Reuse Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the El Paso Water Reclamation and Reuse Project to reclaim and reuse wastewater in the service area of the El Paso Water Utilities Public Service Board, El Paso, Texas.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12h.)

**Sec. 1623. [Reclaimed Water in Pasadena.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the City of Pasadena, California, reclaimed water project to obtain, store, and use reclaimed water in Pasadena and its service area, as well as neighboring communities.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12i.)

**Sec. 1624. [Phase 1 of the Orange County Regional Water Reclamation Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of phase 1 of the Orange County Regional Water Reclamation Project, to reclaim and reuse

**(b) [Cost share.]**—The Federal share of the cost of a project described water within the service area of the Orange County Water District in California.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12j.)

**Sec. 1625. [City of West Jordan Water Reuse Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the City of West Jordan, Utah, is authorized to participate in the design, planning, and construction of the City of West Jordan Water Reuse Project to recycle and reuse water in its service area from the South Valley Water Reclamation Facility Discharge Waters in Utah.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

October 30, 1992

3886 WASTEWATER AND GROUNDWATER STUDIES

(c) **[Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). Act of October 9, 1996; 110 Stat. 3293; 43 U.S.C. § 390h-12k.)

**Sec. 1626. [Hi-Desert Water District in Yucca Valley, California Wastewater Collection and Reuse Facility.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Hi-Desert Water District in Yucca Valley, California wastewater collection and reuse facility.

(b) **[Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

(c) **[Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12l.)

**Sec. 1627. [Mission Basin Brackish Groundwater Desalting Demonstration Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the City of Oceanside, is authorized to participate in the design, planning, and construction of a 3,000,000 gallon per day expansion of the Mission Basin Brackish Groundwater Desalting Demonstration Project in Oceanside, California.

(b) **[Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

(c) **[Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12m.)

**Sec. 1628. [Treatment of effluent from the sanitation districts of Los Angeles County through the City of Long Beach.]—(a) [Authorization.]**—The Secretary, in cooperation with the Water Replenishment District of Southern California, the Orange County Water District in the State of California, and other appropriate authorities, is authorized to participate in the design, planning, and construction of water reclamation and reuse projects to treat approximately 10,000 acre-feet per year of effluent from the sanitation districts of Los Angeles County through the city of Long Beach.

(b) **[Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

(c) **[Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). Act of October 9, 1996, 110 Stat. 3294; 43 U.S.C. § 390h-12n.)

**Sec. 1629. [San Joaquin Area Water Recycling And Reuse Project.]—(a) [Authorization.]**—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the San Joaquin Area Water Recycling and Reuse Project, in cooperation with the City of Tracy, and consisting of

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3887

participating projects which will reclaim and reuse water within the County of San Joaquin in California.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12o.)

**Sec. 1630. [Tooele Wastewater Treatment And Reuse Project.]—(a) [Authorization.]**—The Secretary, in cooperation with Tooele City, Utah, is authorized to participate in the design, planning, and construction of the Tooele Wastewater Treatment and Reuse Project.

**(b) [Cost share.]**—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

**(c) [Limitation.]**—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12p.)

**Sec. 1631. [Authorization of appropriations.]—(a) [Authorization.]**—There are authorized to be appropriated such sums as may be necessary to carry out the purposes and provisions of sections 1601 through 1630 of this title.

**(b) [Investigations and studies required.]**—(1) Funds may not be appropriated for the construction of any project authorized by this title until after—

(A) an appraisal investigation and a feasibility study that complies with the provisions of sections 1603(b) or 1604(c), as the case may be, have been completed by the Secretary or the non-Federal project sponsor;

(B) the Secretary has determined that the non-Federal project sponsor is financially capable of funding the non-Federal share of the project's costs; and

(C) the Secretary has approved a cost-sharing agreement with the non-Federal project sponsor which commits the non-Federal project sponsor to funding its proportionate share of the project's construction costs on an annual basis.

(2) The requirements of paragraph (1) shall not apply to those projects authorized by this title for which funds were appropriated prior to January 1, 1996.

**(c) [Notification.]**—The Secretary shall notify the Committees on Resources and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate within 30 days after the signing of a cost-sharing agreement pursuant to subsection (b) that such an agreement has been signed and that the Secretary has determined that the non-Federal project sponsor is financially capable of funding the project's non-Federal share of the project's costs.

October 30, 1992

3888 WASTEWATER AND GROUNDWATER STUDIES

**(d) [Cost limitations.]**—(1) Notwithstanding any other provision of this title and except as provided by paragraph (2), the Federal share of the costs of each of the individual projects authorized by this title shall not exceed \$20,000,000 (October 1996 prices). (2) In the case of any project authorized by this title for which construction funds were appropriated before January 1, 1996, the Federal share of the cost of such project may not exceed the amount specified as the 'total Federal obligation' for that project in the budget justification made by the Bureau of Reclamation for fiscal year 1997, as contained in part 3 of the report of the hearing held on March 27, 1996, before the Subcommittee on Energy and Water Development of the Committee on Appropriations of the House of Representatives. (110 Stat. 3290 and 3296; 43 U.S.C. § 390h-13.)

EXPLANATORY NOTE

**1996 Amendments.** Section 7 of the Act of October 9, 1996, (Public Law 104-266, 110 Stat. 3290) amended section 1631, as amended by section 2 of the 1996 Act, by inserting "(a)" before "There are authorized" and by adding at the end subsections (b), (c), and (d) as they appear above. The 1996 Act appears in Volume V at page 4087.

**Sec. 1632. [Groundwater study.]—(a) [Investigation of project impacts required.]**—In furtherance of the High Plains Groundwater Demonstration Program Act of 1983 (98 Stat. 1675), the Secretary of the Interior, acting through the Bureau of Reclamation and the United States Geological Survey, shall conduct an investigation and analysis of the impacts of existing Bureau of Reclamation projects on the quality and quantity of groundwater resources. Based on such investigation and analysis, the Secretary shall prepare a reclamation groundwater management and technical assistance report which shall include—

(1) a description of the findings of the investigation and analysis, including the methodology employed;

(2) a description of methods for optimizing Bureau of Reclamation project operations to ameliorate adverse impacts on groundwater[;] and

(3) the Secretary's recommendations, along with the recommendations of the Governors of the affected States, concerning the establishment of a groundwater management and technical assistance program in the Department of the Interior in order to assist Federal and non-Federal entity development and implementation of groundwater management plans and activities.

**(b) [Consultation with Governors of affected States required.]**—In conducting the investigation and analysis, and in preparation of the report referred to in this section, the Secretary shall consult with the Governors of the affected States.

October 30, 1992

WASTEWATER AND GROUNDWATER STUDIES 3889

**(c) [Report.]**—The report shall be submitted to the Committees on Appropriations and Resources of the House of Representatives and the Committees on Appropriations and Energy and Natural Resources of the Senate within three years of the appropriation of funds authorized by section 1633. (106 Stat. 4668, 108 Stat. 4594, 109 Stat. 186, 110 Stat. 3290; 43 U.S.C. § 390h-14.)

**Sec. 1633. [Authorization of appropriations.]**—There is authorized to be appropriated for fiscal years beginning after September 30, 1992, \$4,000,000 to carry out the study authorized by section 1632. (106 Stat. 4669, 110 Stat. 3290; 43 U.S.C. § 390h-15.)

EXPLANATORY NOTES

**1996 Amendments.** Subsection 2.(a)(1) of the Act of October 9, 1996, (Public Law 104-266, 110 Stat. 3290) amended Title XVI by redesignating sections 1615, 1616, and 1617 as sections 1631, 1632, and 1633, respectively. Subsection 2.(a)(2) amended Title XVI by inserting after section 1614 new sections 1615 through 1630 as they appear above. Subsection 2.(b), Conforming Amendments, read as follows:

(1) Section 1631 of such Act, as redesignated by subsection (a)(1), is amended by striking out "1614" and inserting in lieu thereof "1630".

(2) Section 1632(c) of such Act, as

redesignated by subsection (a)(1), is amended by striking out "section 1617" and inserting in lieu thereof "section 1633".

(3) Section 1633 of such Act, as redesignated by subsection (a)(1), is amended by striking out "section 1616" and inserting in lieu thereof "section 1632". (43 U.S.C. § 390h-15.) The 1996 Act appears in Volume V at page 4087.

**Reference in the text.** The High Plains Groundwater Demonstration Program Act of 1983, Act of September 28, 1984 (Public Law 98-434, 98 Stat. 1675) referenced in section 1632 appears in Volume V at page 3424.

TITLE XVII—IRRIGATION ON STANDING ROCK  
INDIAN RESERVATION, NORTH DAKOTA

**Sec. 1701. [Irrigation on Standing Rock Indian Reservation.]**—(a) Section 5(e) of Public Law 89-108, as amended by section 3 of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99-294, 100 Stat. 419), is amended by striking "Fort Yates" and inserting "one or more locations within the Standing Rock Indian Reservation".

(b) Section 10 of Public Law 89-108, as amended by section 8 of Public Law 99-294 (100 Stat. 424), is further amended by adding subsection (e) as follows:

"(e) The portion of the \$61,000,000 authorized for Indian municipal, rural, and industrial water features shall be indexed as necessary to allow for ordinary fluctuations of construction costs incurred after October 1, 1986, as indicated by engineering costs indices applicable for the type of construction involved. All other authorized cost ceilings shall remain unchanged." (106 Stat. 4669)

October 30, 1992

3890

GRAND CANYON PROTECTION ACT

EXPLANATORY NOTE

**References in the Text.** The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) appears in Volume III at page 1841. Extracts from the 1965 Act, as amended by the Act of May 12, 1986 (Public Law 99-294, 100 Stat. 418) and section 1701 appear in Supplement II at page S933.

TITLE XVIII—GRAND CANYON PROTECTION

**Sec. 1801. [Short title.]**—This Act may be cited as the "Grand Canyon Protection Act of 1992".

**Sec. 1802. [Protection of Grand Canyon National Park.]—(a) [In general.]**—The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1804 and exercise other authorities under existing law in such a manner as to project, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use.

**(b) [Compliance with existing law.]**—The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in *Arizona v. California*, and the provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 that govern allocation, appropriation, development, and exportation of the waters of the Colorado River Basin.

**(c) [Rule of construction.]**—Nothing in this title alters the purposes for which the Grand Canyon National Park or the Glen Canyon National Recreation Area were established or affects the authority and responsibility of the Secretary with respect to the management and administration of the Grand Canyon National Park and Glen Canyon National Recreation Area, including natural and cultural resources and visitor use, under laws applicable to those areas, including, but not limited to, the Act of August 25, 1916 (39 Stat. 535) as amended and supplemented. (106 Stat. 4669)

EXPLANATORY NOTE

**References in the Text.** The Colorado River Compact referenced above appears in Volume I at page 440.

The Upper Colorado River Basin Compact referenced above appears in Volume II at page 909.

The Mexican Water Treaty of 1944 appears in Volume II at page 750.

The decree of the Supreme Court in *Arizona*

*v. California*, 376 U.S. 340 (1964) does not appear herein.

The Colorado River Storage Project Act of 1956, Act of April 11, 1956 (ch. 203, 70 Stat. 105) appears in Volume II at page 1248. Amendments to the 1956 Act appear in Volume IV at pages 2416 and 2871. Amendments and annotations appear in Supplement I at page S247 and Supplement II

October 30, 1992

GRAND CANYON PROTECTION ACT

3891

at page S873.

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

appear at pages 2871, 3130, 3219, 3362, 3403,

3454, 3985, and S995.

The Act of August 25, 1916 (39 Stat. 535) does not appear herein.

**Sec. 1803. [Interim Protection of Grand Canyon National Park.]—**

**(a) [Interim operations.]—**Pending compliance by the Secretary with section 1804, the Secretary shall, on an interim basis, continue to operate Glen Canyon Dam under the Secretary's announced interim operating criteria and the Interagency Agreement between the Bureau of Reclamation and the Western Area Power Administration executed October 2, 1991 and exercise other authorities under existing law, in accordance with the standards set forth in section 1802, utilizing the best and most recent scientific data available.

**(b) [Consultation.]—**The Secretary shall continue to implement Interim Operations in consultation with—

(1) Appropriate agencies of the Department of the Interior, including the Bureau of Reclamation, United States Fish and Wildlife Service, and the National Park Service;

(2) The Secretary of Energy;

(3) The Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(4) Indian Tribes; and

(5) The general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

**(c) [Deviation from interim operations.]—**The Secretary may deviate from Interim Operations upon a finding that deviation is necessary and in the public interest to—

(1) comply with the requirements of Section 1804(a);

(2) respond to hydrologic extremes or power system operation emergencies;

(3) comply with the standards set forth in Section 1802;

(4) respond to advances in scientific data; or

(5) comply with the terms of the Interagency Agreement.

**(d) Termination of interim operations.—**Interim operations described in this section shall terminate upon compliance by the Secretary with section 1804. (106 Stat. 4670)

**Sec. 1804. [Glen Canyon Dam Environmental Impact Statement, long-term operation of Glen Canyon Dam.]—(a) [Final environmental impact statement.]—**Not later than 2 years after the date of enactment of this Act, the Secretary shall complete a final Glen Canyon Dam environmental

October 30, 1992

3892

GRAND CANYON PROTECTION ACT

impact statement, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

EXPLANATORY NOTE

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

**(b) [Audit and Audit Reports.]**—The Comptroller General shall—(1) audit the costs and benefits to water and power users and to natural, recreational, and cultural resources resulting from management policies and dam operations identified pursuant to the environmental impact statement described in subsection (a); and

(2) report the results of the audit to the Secretary and the Congress.

**(c) [Adoption of criteria and plans.]**—(1) Based on the findings, conclusions, and recommendations made in the environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall—

(A) adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968; and

(B) exercise other authorities under existing law, so as to ensure that Glen Canyon Dam is operated in a manner consistent with section 1802.

**(2) [Reports.]**—Each year after the date of the adoption of criteria and operating plans pursuant to paragraph (1), the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968 on the preceding year and the projected year operations undertaken pursuant to this Act.

(3) In preparing the criteria and operating plans described in section 602(b) of the Colorado River Basin Project Act of 1968 and in this subsection, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including—

(A) representatives of academic and scientific communities;

(B) environmental organizations;

(C) the recreation industry; and

(D) contractors for the purchase of Federal power produced at Glen Canyon Dam.

**(d) [Report to Congress.]**—Upon implementation of long-term operations under subsection (c), the Secretary shall submit to the Congress the environmental impact statement described in subsection (a) and a report describing the long-term operations and other reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the

October 30, 1992

MID-DAKOTA RURAL WATER SYSTEM

3893

natural, recreational, and cultural resources of the Colorado River downstream of Glen Canyon Dam.

**(e) [Allocation of costs.]**—The Secretary of the Interior, in consultation with the Secretary of Energy, is directed to reallocate the costs of construction, operation, maintenance, replacement and emergency expenditures for Glen Canyon Dam among the purposes directed in section 1802 of this Act and the purposes established in the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 170). Costs allocated to section 1802 purposes shall be nonreimbursable. Except that in fiscal year 1993 through 1997 such costs shall be nonreimbursable only to the extent to which the Secretary finds the effect of all provisions of this Act is to increase net offsetting receipts; *Provided*, That if the Secretary finds in any such year that the enactment of this Act does cause a reduction in net offsetting receipts generated by all provisions of this Act, the costs allocated to section 1802 purposes shall remain reimbursable. The Secretary shall determine the effect of all the provisions of this Act and submit a report to the appropriate House and Senate committees by January 31 of each fiscal year, and such report shall contain for that fiscal year a detailed accounting of expenditures incurred pursuant to this Act, offsetting receipts generated by this Act, and any increase or reduction in net offsetting receipts generated by this Act. (106 Stat. 4670 - 4672)

**Sec. 1808. [Authorization of appropriations.]**—There are authorized to be appropriated such sums as are necessary to carry out this title.

**Sec. 1809. [Replacement power—Report required.]**—The Secretary of Energy in consultation with the Secretary of the Interior and with representatives of the Colorado River Storage Project power customers, environmental organizations and the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall identify economically and technically feasible methods of replacing any power generation that is lost through adoption of long-term operational criteria for Glen Canyon Dam as required by section 1804 of this title. The Secretary shall present a report of the findings, and implementing draft legislation, if necessary, not later than two years after adoption of long-term operating criteria. The Secretary shall include an investigation of the feasibility of adjusting operations at Hoover Dam to replace all or part of such lost generation. The Secretary shall include an investigation of the modifications or additions to the transmission system that may be required to acquire and deliver replacement power. (106 Stat. 4673)

TITLE XIX—MID-DAKOTA RURAL WATER SYSTEM

**Sec. 1901. [Short title.]**—This title may be cited as the "Mid-Dakota Rural Water System Act of 1992".

**Sec. 1902. [Definitions.]**—For purposes of this title—(1) the term "feasibility study" means the study entitled "Mid-Dakota Rural Water System Feasibility Study and Report" dated November 1988 and revised January 1989 and March 1989, as supplemented by the "Supplemental Report for Mid-Dakota Rural Water System" dated March 1990 (which supplemental report shall control in the case of any inconsistency between it and the study and report), as modified to reflect consideration of the benefits of the water conservation programs developed and implemented under section 1905 of this title;

(2) the term "pumping and incidental operational requirements" means all power requirements incident to the operation of intake facilities, pumping stations, water treatment facilities, reservoirs, and pipelines up to the point of delivery of water by the Mid-Dakota Rural Water System to—

- (A) each entity that distributes water at retail to individual users; or
- (B) each rural use location;

(3) the term "rural use location" includes a water use location—

(A) that is located in or in the vicinity of a municipality identified in appendix A of the feasibility report, for which municipality and vicinity there was on December 31, 1988, no entity engaged in the business of distributing water at retail to users in that municipality or vicinity; and

(B) that is one of no more than 40 water use locations in that municipality and vicinity;

(4) the term "Secretary" means the Secretary of the Interior;

(5) the term "summer electrical season" means May through October of each year;

(6) the term "water system" means the Mid-Dakota Rural Water System, substantially in accordance with the feasibility study;

(7) the term "Western" means the Western Area Power Administration;

(8) the term "wetland component" means the wetland development and enhancement component of the water system, substantially in accordance with the wetland component report; and

(9) the term "wetland component report" means the report entitled "Wetlands Development and Enhancement Component of the Mid-Dakota Rural Water System" dated April 1990. (106 Stat. 4673)

**Sec. 1903. [Federal assistance for rural water system.]—(a) [In general.]**—The Secretary is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water system.

**(b) [Service area.]**—The water system shall provide for safe and adequate municipal, rural, and industrial water supplies; mitigation of wetland areas; and water conservation in Beadle County (including the city of Huron), Buffalo, Hand, Hughes, Hyde, Jerauld, Potter, Sanborn, Spink, and Sully Counties, and elsewhere in South Dakota.

October 30, 1992

MID-DAKOTA RURAL WATER SYSTEM

3895

**(c) [Terms and conditions.]**—The Secretary shall make the grants and loans authorized by subsection (a) on terms and conditions equivalent to those applied by the Secretary of Agriculture in providing assistance to projects for the conservation, development, use, and control of water under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1926(a)), except to the extent that those terms and conditions are inconsistent with this title.

EXPLANATORY NOTE

**References in the Text.** The Consolidated Farm and Rural Development Act, Act of August 8, 1961, referenced above appears in Supplement I at page S309.

**(d) [Amount of grants.]**—Grants made available under subsection (a) to Mid-Dakota Rural Water System, Inc., and water conservation measures consistent with section 1905 of this title shall not exceed 85 percent of the amount authorized to be appropriated by section 1912 of this title.

**(e) [Loan terms.]**—(1) a loan or loans made to Mid-Dakota Rural Water System, Inc. under the provisions of this title shall be repaid, with interest, within thirty years from the date of each loan or loans and no penalty for pre-payment; and

(2) interest on a loan or loans made under subsection (a) to Mid-Dakota Rural Water System, Inc.—

(A) 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; and

(B) shall not accrue during planning and construction of the water system, and the first payment on such a loan shall not be due until after completion of construction of the water system.

**(f) [Limitation on availability of construction funds—Reports.]**—The Secretary shall not obligate funds for the construction of the Mid-Dakota Water Supply System until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) have been met; and

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than ninety days.

**(g) [Coordination with the Department of Agriculture.]**—(1) The Secretary shall coordinate with the Secretary of Agriculture, to the maximum extent practicable, grant and loan assistance made under this section with similar assistance available under the Consolidated Farm and Rural Development Act (7 U.S.C. § 1921 et seq.).

(2) The Secretary of Agriculture shall take into consideration grant and loan assistance available under this section when considering whether to provide similar assistance available under the Consolidated Farm and Rural Development Act (7 U.S.C. § 1921 et seq.) to an applicant in the service area defined in subsection (b). (106 Stat. 4674)

**Sec. 1904. [Federal assistance for wetland development and enhancement.]—(a) [Initial development.]**—The Secretary shall make grants and otherwise make funds available to Mid-Dakota Rural Water System, Inc. and other private, State, and Federal entities for the initial development of the wetland component.

**(b) [Operation and maintenance.]**—The Secretary shall make a grant, not to exceed \$100,000 annually, to the Mid-Dakota Rural Water System, Inc., for the operation and maintenance of the wetland component.

**(c) [Nonreimbursement.]**—Funds provided under this section shall be nonreimbursable and nonreturnable. (106 Stat. 4675)

**Sec. 1905. [Water conservation.]—(a) [Withholding of funds.]**—The Secretary shall not obligate Federal funds for construction of the water system until the Secretary finds that non-Federal entities have developed and implemented water conservation programs throughout the service area of the water system.

**(b) [Purpose of programs.]**—The water conservation programs required by subsection (a) shall be designed to ensure that users of water from the water system will use the best practicable technology and management techniques to reduce water use and water system costs.

**(c) [Description of programs.]**—Such water conservation programs shall include (but are not limited to) adoption and enforcement of the following-

(1) low consumption performance standards for all newly installed plumbing fixtures;

(2) leak detection and repair programs;

(3) metering for all elements and individual connections of the rural water supply systems to be accomplished within five years. (For purposes of this paragraph, residential buildings of more than four units may be considered as individual customers);

(4) declining block rate schedules shall not be used for municipal households and special water users (as defined in the feasibility study);

(5) public education programs; and

(6) coordinated operation among each rural water system and the preexisting water supply facilities in its service area. Such programs shall contain provisions for periodic review and revision, in cooperation with the Secretary. (106 Stat. 4675)

**Sec. 1906. [Mitigation of fish and wildlife losses.]**—Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the

October 30, 1992

MID-DAKOTA RURAL WATER SYSTEM

3897

water system shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction. (106 Stat. 4676)

**Sec. 1907. [Use of Pick-Sloan power.]—(a) [In general.]**—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, Western shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water system during the summer electrical season.

**(b) [Conditions.]**—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water system shall be operated on a not-for-profit basis.

(2) The water system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a cooperative power supplier which purchases power from a cooperative power supplier which itself purchases power from Western.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be Western's Pick-Sloan Eastern Division Firm Power Rate Schedule in effect when the power is delivered by Western.

(4) It shall be agreed by contract among—

(A) Western;

(B) the power supplier with which the water system contracts under paragraph (2);

(C) that entity's power supplier; and

(D) Mid-Dakota Rural Water System, Inc.;

that for the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water system, but the water system's power supplier shall not be precluded from including in its charges to the water system for such electric service its other usual and customary charges.

(5) Mid-Dakota Rural Water System, Inc., shall pay its power supplier for electric service, other than for capacity and energy supplied pursuant to subsection (a), in accordance with the power supplier's applicable rate schedule. (106 Stat. 4676)

**Sec. 1908. [Rule of construction.]**—This title shall not be construed to limit authorization for water projects in the State of South Dakota under existing law or future enactments.

**Sec. 1909. [Water rights.]**—Nothing in this title shall be construed to—

(1) invalidate or preempt State water law or an interstate compact governing water;

(2) the rights of any State to any appropriated share of the waters of any body of surface or groundwater, whether determined by past or future

October 30, 1992

3898

LAKE ANDES-WAGNER/MARTY II

interstate compacts or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal; or

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any groundwater resources. (106 Stat. 4676)

**Sec. 1910. [Use of Government facilities.]**—The use of and connection of water system facilities to Government facilities at the Oahe powerhouse and pumping plant and their use for the purpose of supplying water to the water system may be permitted to the extent that such use does not detrimentally affect the use of those Government facilities for the other purposes for which they are authorized.

**Sec. 1911. [Authorization of appropriations.]—(a) [Water system.]**—There is authorized to be appropriated to the Secretary \$100,000,000 for the planning and construction of the water system under section 1903, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after October 1, 1989, such sums to remain available under expended.

**(b) [Wetland component.]**—There are authorized to be appropriated to the Secretary—

(1) \$2,756,000 for the initial development of the wetland component under section 1904; and

(2) such sums as are necessary for the operation and maintenance of the wetland component, not exceeding \$100,000 annually, under section 1904.

TITLE XX—LAKE ANDES-WAGNER/MARTY II, SOUTH DAKOTA

**Sec. 2001. [Short title.]**—This title may be cited as the "Lake Andes-Wagner/Marty I, Act of 1992". (106 Stat. 4677)

**Sec. 2002. [Demonstration Program.]—(a)** The Secretary, acting pursuant to existing authority under the Federal reclamation laws, shall, through the Bureau of Reclamation, and in coordination with the Secretary of Agriculture and with the assistance and cooperation of an oversight committee consisting of representatives of the Bureau of Indian Affairs, Department of Agriculture, Environmental Protection Agency, United States Fish and Wildlife Service, United States Geological Survey, South Dakota Department of Game, Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton-Sioux Tribe, and the Lake Andes-Wagner Water Systems, Inc., carry out a demonstration program (hereinafter in this title the "Demonstration Program") in substantial accordance with the "Lake Andes-Wagner-Marty II Demonstration Program Plan of Study," dated May 1990, a copy of which is on file with the Committee on Energy and Natural Resources of the Senate

October 30, 1992

LAKE ANDES-WAGNER/MARTY II

3899

and the Committee on Interior and Insular Affairs of the House of Representatives.

(b) The objectives of the Demonstration Program shall include:

(1) development of accurate and definitive means of quantifying projected irrigation and drainage requirements and providing reliable estimates of drainage return flow quality and quantity with respect to glacial till and other soils found in the specific areas to be served with irrigation water by the planned Lake Andes-Wagner Unit and Marty II Unit and which may also have application to the irrigation and drainage of similar soils found in other areas of the United States;

(2) development of best management practices for the purpose of improving the efficiency of irrigation water use and developing and demonstrating management techniques and technologies for glacial till soils which will prevent or otherwise ameliorate the degradation of water quality by irrigation practices;

(3) investigation and demonstration of the potential for development and enhancement of wetlands and fish and wildlife within and adjacent to the service areas of the planned Lake Andes-Wagner Unit and the Marty II Unit through the application of water and other management practices;

(4) investigation and demonstration of the suitability of glacial till soils for crop production under irrigation, giving special emphasis to crops of agricultural commodities for which an acreage reduction program is not in effect under the provisions of the Agriculture Act of 1949 (7 U.S.C. § 1461 et seq.) or by any successor programs established for crop years subsequent to 1990.

(c) Study sites shall be obtained through leases from landowners who voluntarily agree to participate in the Demonstration Program under the following conditions:

(1) rentals paid under a lease shall be based on the fair rental market value prevailing for dry land farming of lands of similar quantity and quality plus a payment representing reasonable compensation for inconveniences to be encountered by the lessor;

(2) the Demonstration Program shall provide for the—

(A) supply of all water, delivery system, pivot systems and drains;

(B) operate and maintain the irrigation system;

(C) Secretary of Agriculture to supply all seed, fertilizers and pesticides and make standardized equipment available;

(D) Secretary of Agriculture to determine crop rotations and cultural practices;

(E) have unrestricted access to leased lands;

(3) the Secretary and the Secretary of Agriculture may contract with the lessor and/or custom operators to accomplish agriculture work, which work shall be performed in accordance with the Demonstration Program;

(4) no grazing may be performed on a study site;

October 30, 1992

3900

LAKE ANDES-WAGNER/MARTY II

(5) crops grown shall be the property of the United States; and

(6) at the conclusion of the lease, the lands involved will, to the extent practicable, be restored by the Secretary to their pre-leased condition at no expense to the lessor.

(d) The Secretary of Agriculture shall offer crops grown under the Demonstration Program for sale to the highest bidder under terms and conditions to be prescribed by the Secretary. Any crops not sold shall be disposed of as the Secretary determines to appropriate, except that no crop may be given away to any for-profit entity or farm operator. All receipts from crop sales shall be covered into the Treasury to the credit of the fund from which appropriations for the conduct of the Demonstration Program are derived.

(e) The land from each ownership in a study site shall be established by the Secretary as a separate farm. The Secretary of Agriculture shall provide for lessors to preserve the cropland base and history on lands leased to the Demonstration Project under the same terms and conditions provided for under section 1236(b) of the Food Security Act of 1985 (7 U.S.C. § 3836(b)). Establishment of such study site farms shall not entitle the Secretary to participate in farm programs or to build program base. (106 Stat. 4677)

EXPLANATORY NOTE

**References in the Text.** The Agriculture Act of 1949 (7 U.S.C. § 1461 et seq.) referenced above does not appear herein. The Food Security Act of 1985 (7 U.S.C. § 3836(b)) does not appear herein.

**(f) [Reports.]**—The Secretary shall periodically, but not less often than once a year, report to the Committee on Energy and Natural Resources of the Senate, to the Committee on Resources and the Committee on Agriculture of the House of Representatives, and to the Governor of South Dakota concerning the activities undertaken pursuant to this section. The Secretary's reports and other information and data developed pursuant to this section shall be available to the public without charge. Each Demonstration Program report, including the report referred to in paragraph (3) of this subsection, shall evaluate data covering the results of the Demonstration Program as carried out on the six study sites during the period covered by the report together with data developed under the wetlands enhancement aspect during that period. The demonstration phase of the Demonstration Program shall terminate at the conclusion of the fifth full irrigation season. Promptly thereafter, the Secretary shall:

(1) remove temporary facilities and equipment and restore the study sites as nearly as practicable to their prelease condition. The Secretary may

October 30, 1992

LAKE ANDES-WAGNER/MARTY II

3901

transfer the pumping plant and/or distribution lines to public agencies for uses other than commercial irrigation if so doing would be less costly than removing such equipment;

(2) otherwise wind up the Demonstration Program; and

(3) prepare, in coordination with the Secretary of Agriculture, a concluding report and recommendations covering the entire demonstration phase, which report shall be transmitted by the Secretary to the Congress and to the Governor of South Dakota not later than April 1 of the calendar year following the calendar year in which the demonstration phase of the Demonstration Program terminates. The Secretary's concluding report, together with other information and data developed in the course of the Demonstration Program, shall be available to the public without charge.

(g) Costs of the Demonstration Program funded by Congressional appropriations shall be accounted for pursuant to the Act of October 29, 1971 (85 Stat. 416). Costs incurred by the State of South Dakota and any agencies thereof arising out of consultation and participation in the Demonstration Program shall not be reimbursed by the United States.

(h) Funding to cover expenses of the Federal agencies participating in the Demonstration Program shall be included in the budget submittals for the Bureau of Reclamation. The Secretary, using only funds appropriated for the Demonstration Program, shall transfer to the other Federal agencies funds appropriated for their expenses. (106 Stat. 4677)

EXPLANATORY NOTE

**Reference in the Text.** The Act of 416) referenced above appears in Volume IV October 29, 1971, (Public Law 92-149, 85 Stat. at page 2639.

**Sec. 2003. [Planning reports—Environmental impact statements.]—**

(a) On the basis of the concluding report and recommendations of the Demonstration Program provided for in section 2002, the Secretary, with respect to the Lake Andes-Wagner Unit and the Marty II Unit, shall comply with the study and reporting requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) and regulations issued to implement the provisions thereof. The final reports prepared under this subsection shall be transmitted to the Congress simultaneously with their filing with the Environmental Protection Agency.

(b) Each report prepared under subsection (a) shall include a detailed plan providing for the prevention or avoidance of adverse water quality conditions attributable to agricultural drainage water originating from lands to be irrigated by the Unit to which the report pertains. The Secretary shall not recommend that any funds be appropriated for construction of such Unit unless the respective report prepared pursuant to subsection (a) is accompanied by findings by the Secretary of Agriculture, the Director of the

October 30, 1992

3902

LAKE ANDES-WAGNER/MARTY II

United States Fish and Wildlife Service, and the Administrator of the Environmental Protection Agency that the Unit to which the report pertains can be constructed, operated and maintained so as to comply with all applicable water quality standards and avoid significant adverse effects to fish and wildlife resulting from the bioaccumulation of selenium.

(c) The construction of a Unit may not be undertaken until the final report pertaining to that Unit, and the findings referred to in subsection (b) of this section, have lain before the Congress for not less than one hundred and eighty days and the Congress has appropriated funds for the initiation of construction. (106 Stat. 4680)

EXPLANATORY NOTE

**References in the Text.** The National 852; 42 U.S.C. § 4321.) referenced above  
Environmental Policy Act of 1969, Act of appears in Volume IV at page 2492.  
January 1, 1970 (Public Law 91-190, 83 Stat.

**Sec. 2004. [Authorization of the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota.]**—Subject to the requirements of section 2003 of this title, the Secretary is authorized to construct, operate, and maintain the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota, as units of the South Dakota Pumping Divisions, Pick-Sloan Missouri Basin Program. The units shall be integrated physically and financially with other Federal works constructed under the Pick-Sloan Missouri Basin Program. (106 Stat. 4680)

**Sec. 2005. [Conditions.]**—(a) The Lake Andes-Wagner Unit shall be constructed, operated and maintained to irrigate not more than approximately 45,000 acres substantially as provided in the Lake Andes-Wagner Unit Planning Report-Final Environmental Impact Statement filed September 17, 1985, supplemented as provided in section 2003 of this title. The Lake Andes-Wagner Unit shall include on-farm pumps, irrigation sprinkler systems, and other on-farm facilities necessary for the irrigation of not to exceed approximately 1,700 acres of Indian-owned lands. The use of electric power and energy required to operate the facilities for the irrigation of such Indian-owned lands and to provide pressurization for such Indian-owned lands shall be considered to be a project use.

(b) The Marty II Unit shall include a river pump, irrigation distribution system, booster pumps, irrigation sprinkler systems, farm and project drains, electrical distribution facilities, and the pressurization to irrigate not more than approximately three thousand acres of Indian-owned land in the Yankton-Sioux Indian Reservation, substantially as provided in the final report for the Marty II Unit prepared pursuant to section 2003 of this title.

(c) The construction costs of the Lake Andes-Wagner Unit allocated to irrigation of non-Indian owned lands (both those assigned for return by the water users and those assigned for return from power revenues of the

October 30, 1992

LAKE ANDES-WAGNER/MARTY II

3903

Pick-Sloan Missouri Basin Program) shall be repaid no later than forty years following a determination by the Secretary that the project is substantially complete. Repayment of the construction costs of the Lake Andes-Wagner Unit apportioned to serving Indian-owned lands and of the Marty II Unit allocated to irrigation shall be governed by the Act of July 1, 1932 (47 Stat. 564, Chapter 369; 25 U.S.C. § 386a).

EXPLANATORY NOTE

**References in the Text.** The Act of July 1, 1932, commonly known as the "Leavitt Act", (ch. 369, 47 Stat. 564; 25 U.S.C. § 386a.) referenced above, appears in Volume I at page 504.

(d) Indian-owned lands, or interests therein, required for the Lake Andes-Wagner Unit or the Marty II Unit may, as an alternative to their acquisition pursuant to existing authority under the Federal reclamation laws, be acquired by exchange for land or interests therein of equal or greater value which are owned by the United States and administered by the Secretary or which may be acquired for that purpose by the Secretary.

(e) For purposes of participation of lands in the Lake Andes-Wagner Unit and the Marty II Unit in programs covered by title V of the Agriculture Act of 1949 (7 U.S.C. § 1461, et seq.) as amended by subtitle A of title 19 of the Food, Agriculture, Conservation and Trade Act of 1990 the crop acreage base determined under title V of that Act as so amended and the program payment yield determined under title V of that Act as so amended shall be the crop acreage base and program payment yield established for the crop year immediately preceding the crop year in which the development period for each Unit is initiated. For any successor programs established for crop years subsequent to 1995, the acreage and yield on which any program payments are based shall be determined without taking into consideration any increase in acreage or yield resulting from the construction and operation of the Units. (106 Stat. 4680)

EXPLANATORY NOTE

**References in the Text.** Subtitle A of title 19 of the Food Agriculture, Conservation, and Trade Act of 1990, referenced above, does not appear herein.

(f) Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the facilities authorized by this section shall be concurrent with the construction of the Unit involved and shall be on an acre-for-acre basis, based on ecological equivalency. In addition to the fish and wildlife enhancement to be provided by the fish rearing pond of the Lake

Andes Unit, other facilities of that Unit may be utilized to provide fish and wildlife benefits beyond the mitigation required to the extent that such benefits may be provided without increasing costs of construction, operation, maintenance or replacement allocable to irrigation or impairing the efficiency of that Unit for irrigation purposes. (106 Stat.4681)

**Sec. 2006. [Indian employment.]**—In carrying out sections 2002, 2004 and 2005 of this title, preference shall be given to the employment of members of the Yankton-Sioux Tribe who can perform the work required regardless of age (subject to existing laws and regulations), sex, or religion, and to the extent feasible in connection with the efficient performance of such functions, training and employment opportunities shall be provided to members of the Yankton-Sioux Tribe regardless of age (subject to existing laws and regulations), sex, or religion who are not fully qualified to perform such functions. (106 Stat. 4681)

**Sec. 2007. [Federal reclamation laws govern.]**—This title is a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts supplemental thereto and amendatory thereof). The Federal reclamation laws shall govern all functions undertaken pursuant to this title, except as otherwise provided in this title. (106 Stat. 4682)

**Sec. 2008. [Cost sharing.]—(a) [In general.]**—The Secretary is authorized and directed to enter into negotiations with State and local interests for an agreement providing for the equitable sharing of the costs of constructing the Lake Andes-Wagner Unit.

(b) the agreement shall include provisions for:

(1) the establishment and capitalization of the non-Federal fund, including, subject to the Secretary's approval, investment policies and selection of the administering financial institution, and including also provisions dealing with withdrawals of moneys in the fund for construction purposes;

(2) the District to administer the design and construction, which shall be subject to the approval of the Secretary, of the distribution and drainage systems for the Lake Andes-Wagner Unit;

(3) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the ring dike; and

(4) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the Unit's closed drainage system; subject to the conditions that:

(A) construction of the closed drainage system shall commence not earlier than the sixth year of full operation of the Unit and shall continue over a period of thirty-five years as required by the Secretary subject to such modifications in the commencement date and the construction period as the Secretary determines to be required on the basis of physical conditions; and

October 30, 1992

LAKE ANDES-WAGNER/MARTY II

3905

(B) the District, in addition to such annual assessment as may be required to meet its expenses (including operation and maintenance costs and any annual repayment installments to the United States) shall, commencing three years after issuance by the Secretary of a notice that construction of the Unit (other than drainage facilities) has been completed, levy assessments annually of not less than \$1.00 per irrigable acre calculated to provide moneys sufficient, together with other moneys in the fund, including anticipated accruals, referred to in paragraph (1), to finance the construction of the closed drainage system.

(c) Notwithstanding any other requirements of this section, the Secretary shall require that the agreement to be negotiated pursuant to this section shall provide that the total non-Federal share of the costs of construction allocable to irrigation of the facilities of the Lake Andes-Wagner Unit to be constructed pursuant to subsection (a) of section 2004 of this title (other than the costs apportionable to serving Indian-owned lands and the facilities described in the second sentence of that subsection) shall be 30 percent. The 30 percent non-Federal share shall include:

(1) funds to be deposited in the non-Federal fund referred to in paragraph (1) of subsection (b) of this section and interest earned thereon;

(2) all funds heretofore or hereafter made available to the United States by non-Federal interests, or expended by such interests, for planning or advance planning assistance for the Lake Andes-Wagner Unit or for the Marty II Unit; and

(3) any feature to which this section applies shall not be initiated until after the District and the State have entered into the cost-share agreement with the United States required by this section. (106 Stat. 4682)

**Sec. 2009. [Authorization of appropriations.]—(a) [Lake Andes-Wagner Unit.]—**There are authorized to be appropriated, subject to the findings required pursuant to section 2003(b) of this title—

(1) \$175,000,000 (October 1989 price levels) for construction of the Lake Andes-Wagner Unit (other than the facilities described in the second sentence of subsection (a) of section 2005 of this title) less the non-Federal contributions as provided in subsections (b) and (c) of section 2008 of this title; and

(2) \$1,350,000 (October 1989 price levels) for construction of the facilities described in the second sentence of subsection (a) of section 2005 of this title, which amounts include costs of the Lake Andes-Wagner Irrigation District in administering design and construction of the irrigation distribution and drainage systems.

**(b) [Marty II Unit.]—**There are authorized to be appropriated \$24,000,000 (January 1989 price levels) for construction by the Bureau of Reclamation in consultation with the Bureau of Indian Affairs of the Marty II Unit.

October 30, 1992

3906 RECLAMATION PROJECTS AND AUTHORIZATION ACT

(c) The amounts authorized to be appropriated by subsections (a) and (b) of this section shall be 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.

**(d) [Demonstration Program.]**—There are authorized to be appropriated such amounts as may be necessary to carry out the Demonstration Program.

**(e) [Operation and maintenance.]**—There are authorized to be appropriated such amounts as may be necessary for the operation and maintenance of each Unit.

**Sec. 2010. [Indian water rights.]**—Nothing in this title shall be construed as affecting any water rights or claims thereto of the Yankton-Sioux tribe. (106 Stat. 4683)

TITLE XXI—RIO GRANDE FLOODWAY, SAN ACACIA TO  
BOSQUE DEL ACHE UNIT, NEW MEXICO

**Sec. 2101. [Clarification of cost-share requirements.]**—Notwithstanding any other provision of law, the project for flood control, Rio Grande Floodway, San Acacia to Bosque del Apache Unit, New Mexico, authorized by section 203 of the Flood Control Act of 1948 (Public Law 80-858) and amended by section 204 of the Flood Control Act of 1950 (Public Law 82-516) is modified to more equitably reflect the non-Federal benefits from the project in relation to the total benefits of the project by reducing the non-Federal contribution for the project by that percentage of benefits which is attributable to the Federal properties: *Provided, however,* That the Federal property benefits exceed 50 per centum of the total project benefits. (106 Stat. 4683)

EXPLANATORY NOTE

<b>References in the Text.</b> Extracts from the Flood Control Act of 1948, Act of June 30, 1948 (ch. 771, Public Law 80-858, 62 Stat. 1171) referenced above appear in Volume II at page 901.	Extracts from the Flood Control Act of 1950, Act of May 17, 1950 (ch. 188, Public Law 82-516, 64 Stat. 163) referenced above appear in Volume II at page 1002.
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TITLE XXII—SUNNYSIDE VALLEY IRRIGATION  
DISTRICT, WASHINGTON

**Sec. 2201. [Conveyance to Sunnyside Valley Irrigation District.]**—The Secretary of the Interior shall convey to Sunnyside Valley Irrigation District of Sunnyside, Washington, by quitclaim deed or other appropriate instrument and without consideration, all right, title, and interest of the United States, excluding oil, gas, and other mineral deposits, in and to a parcel of public land described at lots 1 and 2 of block 34 of the town of Sunnyside in section 25,

October 30, 1992

PLATORO DAM AND RESERVOIR

3907

township 10 north, range 22 east, Willamette Meridian, Washington. (106 Stat. 4684)

TITLE XXIII—PLATORO RESERVOIR AND DAM,  
SAN LUIS VALLEY PROJECT, COLORADO

**Sec. 2301. [Findings and declarations.]**—The Congress finds that and declares the following:

(1) Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project was built in 1951 and for all practical purposes has not been usable because of the constraints imposed by the Rio Grande Compact of 1939 on the use of the Rio Grande River among the States of Colorado, New Mexico, and Texas.

(2) The usefulness of Platoro Reservoir under future compact compliance depends upon the careful conservation and wise management of water and requires the operation of the reservoir project in conjunction with privately owned water rights of the local water users.

(3) It is in the best interest of the people of the United States to—

(A) transfer operation, maintenance, and replacement responsibility for the Platoro Dam and Reservoir to the Conejos Water Conservancy District of the State of Colorado, which is the local water user district with repayment responsibility to the United States, and the local representative of the water users with privately owned water rights;

(B) relieve the people of the United States from further risk or obligation in connection with the collection of construction charge repayments and annual operation and maintenance payments for the Platoro Dam and Reservoir by providing for payment of a one-time fee to the United States in lieu of the scheduled annual payments and termination of any further repayment obligation to the United States and the District (Contract Number 11r-1529, as amended); and

(C) determine such one-time fee, taking into account the assumption by the District of all of the operations and maintenance costs associated with the reservoir, including the existing Federal obligation for the operation and maintenance of the reservoir for flood control purposes, and maintaining a minimum stream flow as provided in section 2302(d) of this title. (106 Stat. 4684)

**Sec. 2302. [Transfer of operation and maintenance responsibility of Platoro Reservoir.]—(a) [In general.]**—The Secretary is authorized and directed to undertake the following:

(1) Accept a one-time payment of \$450,000 from the district in lieu of the repayment obligation of paragraphs 8(d) and 11 of the Repayment Contract between the United States and the District (Number 11r-1529) as amended.

(2) Enter into an agreement for the transfer of all of the operation and maintenance functions of the Platoro Dam and Reservoir, including the operation and maintenance of the reservoir for flood control purposes, to the District. The agreement shall provide—

(A) that the District will have the exclusive responsibility for operations and the sole obligation for all of the maintenance of the reservoir in a satisfactory condition for the life of the reservoir subject to review of such maintenance by the Secretary to ensure compliance with reasonable operation, maintenance and dam safety requirements as they apply to Platoro Dam, and Reservoir under Federal and State law; and,

(B) that the District shall have the exclusive use and sole responsibility for maintenance of all associated facilities, including outlet works, remote control equipment, spillway, and land and buildings in the Platoro townsite. The District shall have sole responsibility for maintaining the land and buildings in a condition satisfactory to the United States Forest Service.

**(b) [Title.]**—Title to the Platoro Dam and Reservoir and all associated facilities shall remain with the United States, and authority to make recreational use of Platoro Dam and Reservoir shall be under the control and supervision of the United States Forest Service, Department of Agriculture.

**(c) [Amendments to contract.]**—The Secretary is authorized to enter into such other amendments to such contract Number I1r-1529, as amended, necessary to facilitate the intended operations of the project by the District. All applicable provisions of the Federal reclamation laws shall remain in effect with respect to such contract. (106 Stat. 4685)

**(d) [Conditions imposed upon the district.]**—The transfer of operation and maintenance responsibility under subsection (a) shall be subject to the following conditions:

(1)(A) The district will, after consultation with the United States Forest Service, Department of Agriculture, operate the Platoro Dam and Reservoir in such a way as to provide—

(i) that releases of bypass from the reservoir flush out the channel of the Conejos River periodically in the spring or early summer to maintain the hydrologic regime of the river; and

(ii) that any releases from the reservoir contribute to even flows in the river as far as possible from October 1 to December 1 so as to be sensitive to the brown trout spawn.

(B) Operation of the Platoro Dam and Reservoir by the District for water supply uses (including storage and exchange of water rights owned by the District or its constituents), interstate compact and flood control purposes shall be senior and paramount to the channel flushing and fishery objectives referred to in subparagraph (A).

October 30, 1992

PLATORO DAM AND RESERVOIR

3909

(2) The District will provide and maintain a permanent pool in the Platoro Reservoir for fish, wildlife, and recreation purposes, in the amount of three thousand acre-feet, including the initial filling of the pool and periodic replenishment of seepage and evaporation loss: *Provided, however,* That if necessary to maintain the winter instream flow provided in subparagraph (3), the permanent pool may be allowed to be reduced to two thousand four hundred acre-feet.

(3) In order to preserve fish and wildlife habitat below Platoro Reservoir, the District shall maintain releases of water from Platoro Reservoir of seven cubic feet per second during the months of October through April and shall bypass forty cubic feet per second or natural inflow, whichever is less, during the months of May through September.

(4) The United States Forest Service, Department of Agriculture, is directed to regularly monitor operation of Platoro Reservoir, including releases from it for instream flow purposes, and to enforce the provisions of this subsection under the laws, regulations, and rules applicable to the National Forest System.

**(e) [Flood control management.]**—The Secretary of the Army, acting through the Chief of Engineers, shall retain exclusive authority over Platoro Dam and Reservoir for flood control purposes and shall direct the District in the operation of the dam for such purposes. To the extent possible, management by the Secretary of the Army under this subsection shall be consistent with the water supply use of the reservoir, with the administration of the Rio Grande Compact of 1939 by the Colorado State Engineer and with the provisions of subsection (d) hereof. The Secretary of the Army shall enter into a Letter of Understanding with the District and the United States Bureau of Reclamation prior to transfer of operations which details the responsibility of each party and specifies the flood control criteria for the reservoir.

**(f) [Compliance with compact and other laws.]**—The transfer under section 2302 shall be subject to the District's compliance with the Rio Grande Compact of 1939 and all other applicable laws and regulations, whether of the State of Colorado or of the United States. (106 Stat. 4685)

**Sec. 2303. [Definitions.]**—As used in this title—(1) the term "District" means the Conejos Water Conservancy District of the State of Colorado;

(2) the term "Federal reclamation laws" means the Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto and amendatory thereof;

(3) the term "Platoro Reservoir" means the Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project; and

(4) the term "Secretary" means the Secretary of the Interior.

October 30, 1992

3910 REDWOOD VALLEY COUNTY WATER DISTRICT

TITLE XXIV—REDWOOD VALLEY COUNTY WATER DISTRICT,  
CALIFORNIA

**Sec. 2401. [Sale of Bureau of Reclamation loans.]—(a) [Authorization.]**—The Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall conduct appropriate investigations regarding, and is authorized to, sell, or accept prepayment on, loans made pursuant to the Small Reclamation Projects Act (43 U.S.C. § 422a-4221) to the Redwood Valley County Water District.

EXPLANATORY NOTE

**Reference in the Text.** The Small Reclamation Projects Act, Act of August 6, 1956 (ch. 972, 70 Stat. 1044) referenced above appears in Volume II at page 1044. Amendments of the 1956 Act appear in Volume IV at pages 2641, 2932, 3203, and 3345. Amendments and annotations appear in Supplement I at page S268 and in Supplement II at page S875.

**(b) [Loan valuation.]**—Any sale or prepayment of such loans, which are numbered 14-06-200-8423A and 14-06-200-842A Amendatory to the Redwood Valley County Water District, shall realize an amount to the Federal Government calculated by discounting the remaining payments due on the loans by the interest rate determined according to this section.

**(c) [Interest rate determination.]**—The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

**(d)** In determining the interest rate, the Secretary—

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

**(e) [Tax exempt financing.]**—If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity) to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

October 30, 1992

UNITED WATER CONSERVATION DISTRICT 3911

**(f) [Interest rate limit.]**—Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

**(g) [Approvals required.]**—The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any loan sale or prepayment made pursuant to this title. (106 Stat. 4687)

**Sec. 2402. [Savings provisions.]**—Nothing in this title, including prepayment or other disposition of any loans, shall (a) except to the extent that prepayment may have been authorized heretofore, relieve the borrower from the applications of the provisions of the Federal Reclamation Law (Act of June 17, 1902, and Acts amendatory thereof or supplementary thereto, including the Reclamation Reform Act of 1982), including acreage limitations, to the extent such provisions would apply absent such prepayment; or

EXPLANATORY NOTE

**References in the Text.** The Reclamation 390bb.) referenced above, appears in Volume Reform Act of 1982, Act of October 12, 1982 IV at page 3334, and as subsequently (Public Law 97-293, 96 Stat. 1263; 43 U.S.C. § amended, in Supplement II at page S1092.

**(b) [Title transfer]**—authorize the transfer of title to any federally owned facilities funded by the loans specified in section 2201 of this title without a specific Act of Congress. (106 Stat. 4687)

**Sec. 2403. [Fees and expenses of program.]**—In addition to the amount to be realized by the United States as provided in section 2201, the Redwood Valley County Water District shall pay all reasonable fees and expenses incurred by the Secretary relative to the sale.

**Sec. 2404. [Termination of authority.]**—The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary. (106 Stat. 4688)

TITLE XXV—UNITED WATER CONSERVATION DISTRICT,  
CALIFORNIA

**Sec. 2501. [Sale of the Freeman Diversion Improvement Project loan.]**—(a) **[Agreement.]**—

**(1) [In general.]**—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall conduct appropriate investigations regarding, and is authorized to sell, or accept prepayment on, the loan contract described in paragraph (2) to the United Water

October 30, 1992

3912 UNITED WATER CONSERVATION DISTRICT

Conservation District in California (referred to in this title as the "District") for the Freeman Diversion Improvement Project.

(2) **[Loan contract.]**—The loan contract described in paragraph (1) is numbered 7-07-20-WO615 and was entered into pursuant to the Small Reclamation Projects Act of 1956 (43 U.S.C. § 422a et seq.).

EXPLANATORY NOTE

**Reference in the Text.** The Small Reclamation Projects Act, Act of August 6, 1956 (ch. 972, 70 Stat. 1044) referenced above appears in Volume II at page 1044. Amendments of the 1956 Act appear in Volume IV at pages 2641, 2932, 3203, and 3345. Amendments and annotations appear in Supplement I at page S268 and in Supplement II at page S875.

(b) **[Payment.]**—Any agreement negotiated pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining payments due on the loans by the interest rate determined according to this section.

(c) **[Interest rate determination.]**—The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(d) **[Interest rate guidelines.]**—In determining the interest rate, the Secretary—

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(e) **[Tax exempt financing.]**—If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity) to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(f) **[Interest rate limit.]**—Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(g) **[Approvals required.]**—The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and

October 30, 1992

HIGH PLAINS GROUNDWATER PROGRAM

3913

Budget of the final terms of any loan sale or prepayment made pursuant to this title. (106 Stat. 4688)

**Sec. 2502. [Termination and conveyance of rights.]**—Upon receipt of the payment specified in section 2301(b)—

(1) the District's obligation under the loan contract described in section 2301(a)(2) shall be terminated;

(2) the Secretary of the Interior shall convey all right and interest of the United States in the Freeman Diversion Improvement Project to the District; and

(3) the District shall absolve the United States, and its officers and agents, of any liability associated with the Freeman Diversion Improvement Project.

**Sec. 2503. [Termination of authority.]**—The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary. (106 Stat. 4689)

TITLE XXVI—HIGH PLAINS GROUNDWATER PROGRAM

**Sec. 2601. [High Plains States Groundwater Demonstration Program Act.]**—The High Plains States Groundwater Demonstration Program Act of 1983 (43 U.S.C. § 390g-1 et seq.) is amended as follows:

(1) Section 4(c)(2) and section 5 are each amended by striking "final report" each place it appears and inserting "summary report".

(2) Section 4(c) is amended by adding at the end the following:

"(3) In addition to recommendations made under section 3, the Secretary shall make additional recommendations for design, construction, and operation of demonstration projects. Such projects are authorized to be designed, constructed, and operated in accordance with subsection (a).

"(4) Each project under this section shall terminate five years after the date on which construction on the project is completed.

"(5) At the conclusion of phase II the Secretary shall submit a final report to the Congress which shall include, but not be limited to, a detailed evaluation of the projects under this section."

(3) Section 7 is amended by striking "\$20,000,000 (October 1983 price levels)" and inserting in lieu thereof "\$31,000,000 (October 1990 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 type of construction involved herein". (106 Stat. 4689, 43 U.S.C. § 390g-2, 390g-3, 390g-5.)

October 30, 1992

3914 RECLAMATION RECREATION MANAGEMENT ACT

EXPLANATORY NOTE

**Reference in the Text.** The High Plains States Groundwater Demonstration Program Act of 1983, Act of September 28, 1984 (Public Law 98-434, 98 Stat. 1675; 43 U.S.C. § 390g-1 et seq.) referenced above appears in Volume V at page 3425.

TITLE XXVII—MONTANA IRRIGATION PROJECTS

**Sec. 2701. [Pick-Sloan Project pumping power.]**—(a) The Secretary of the Interior, in cooperation with the Secretary of Energy, shall make available, as soon as practicable after the date of enactment of this Act, project pumping power from the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes" approved December 22, 1944 (58 Stat. 891) (commonly known as the "Flood Control Act of 1944") to two existing non-Federal irrigation projects known as the—

- (1) Haidle Irrigation Project, Prairie County, Montana; and
- (2) Hammond Irrigation District, Rosebud County, Montana.

*Provided,* That the two districts are determined by the Secretary of Energy to be public agencies, as that term is used in section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c).

(b) Power made available under this section shall be at the firm power rate. (106 Stat. 4690)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Flood Control Act of 1944, Act of December 22, 1944 (ch. 665, 58 Stat. 887) referenced above appears in Volume II at page 796. Amendments and annotations of the 1944 Act appear in Supplement I at page S147 and Supplement II at page S861. The Reclamation Project Act of 1939, Act of August 4, 1939 (ch. 418, 53 Stat. 1187) referenced above appears in Volume I at page 634. Amendments and annotations of the 1939 Act appear in Supplement I at page S125.

TITLE XXVIII—RECLAMATION RECREATION MANAGEMENT ACT

**Sec. 2801. [Short title.]**—This title may be cited as the "Reclamation Recreation Management Act of 1992". (16 U.S.C. § 460/31.)

**Sec. 2802. [Findings.]**—The Congress finds and declares the following:

- (1) There is a Federal responsibility to provide opportunities for public recreation at Federal water projects.

October 30, 1992

RECLAMATION RECREATION MANAGEMENT ACT 3915

(2) Some provisions of the Federal Water Project Recreation Act are outdated because of increases in demand for outdoor recreation and changes in the economic climate for recreation managing entities.

(3) Provisions of such Act relating to non-Federal responsibility for all costs of operation, maintenance, and replacement of recreation facilities result in an unfair burden, especially in cases where the facilities are old or underdesigned.

(4) Provisions of such Act that limit the Federal share of recreation facility development at water projects completed before 1965 to \$100,000 preclude a responsible Federal share in providing adequate opportunities for safe outdoor recreation.

(5) There should be Federal authority to expand existing recreation facilities to meet public demand, in partnership with non-Federal interests.

(6) Nothing in this title changes the responsibility of the Bureau to meet the purposes for which Federal Reclamation projects were initially authorized and constructed.

(7) It is therefore in the best interest of the people of this Nation to amend the Federal Water Project Recreation Act to remove outdated restrictions and authorize the Secretary of the Interior to undertake specific measures for the management of Reclamation lands.

**Sec. 2803. [Definitions.]**—For the purposes of this title:

(1) The term "Reclamation lands" means real property administered by the Commissioner of Reclamation, and includes all acquired and withdrawn lands and water areas under jurisdiction of the Bureau.

(2) The term "Reclamation program" means any activity authorized under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. § 371)), and Acts supplementary thereto and amendatory thereof.

(3) The term "Reclamation project" means any water supply or water delivery project constructed or administered by the Bureau of Reclamation under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. § 371), and Acts supplementary thereto and amendatory thereof).

(4) The term "Secretary" means the Secretary of the Interior. (106 Stat. 4691, 16 U.S.C. § 460/32.)

**Sec. 2804. [Amendments to the Federal Water Project Recreation Act.]**—(a) **[Allocation of costs.]**—Section 2(a) of the Federal Water Project Recreation Act (16 U.S.C. § 460/13(a)) is amended, in the matter preceding paragraph (1), by striking "all the costs of operation, maintenance, and replacement" and inserting "not less than one-half the costs of operation, maintenance, and replacement".

October 30, 1992

3916 RECLAMATION RECREATION MANAGEMENT ACT

**(b) [Recreation and fish and wildlife enhancement.]**—Section 3(b)(1) of the Federal Water Project Recreation Act (16 U.S.C. § 460/14(b)(1)) is amended—(1) by striking "within ten years"; and

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

**(c) [Lease of facilities.]**—Section 4 of the Federal Water Project Recreation Act (16 U.S.C. § 460/15) is amended by striking "costs of operation, maintenance, and replacement of existing" and inserting "not less than one-half the costs of operation, maintenance, and replacement of existing".

**(d) [Expansion or modification of existing facilities.]**—Section 3 of the Federal Water Project Recreation Act (16 U.S.C. § 460/14) is amended by adding at the end the following new subsection:

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

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

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

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

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

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

**(e) [Limitation.]**—Section 7(a) of the Federal Water Project Recreation Act (16 U.S.C. § 460/18(a)) is amended—(1) by striking "purposes: *Provided,*" and all that follows through the end of the sentence and inserting "purposes"; and

(2) by striking "subsection 3(b)" and inserting "subsection (b) or (c) of section 3". (106 Stat. 4691)

EXPLANATORY NOTE

**References in the Text.** The Federal Water Project Recreation Act, Act of July 9, 1965 (Public Law 89-72, 79 Stat. 213) referenced above appears in Volume III at page 1820. Amendments and annotations appear in Supplement I at page S389 and in Supplement II at page S921.

October 30, 1992

RECLAMATION RECREATION MANAGEMENT ACT 3917

**Sec. 2805. [Management of Reclamation lands.]—(a) [Administration—Regulations.]—**

(1) Upon a determination that any such fee, charge, or commission is reasonable and appropriate, the Secretary acting through the Commissioner of Reclamation, is authorized to establish—

- (A) filing fees for applications and other documents concerning entry upon and use of Reclamation lands;
- (B) recreation user fees; and
- (C) charges or commissions for the use of Reclamation lands.

(2) The Secretary, acting through the Commissioner of Reclamation, shall promulgate such regulations as the Secretary determines to be necessary

- (A) to carry out the provisions of this section and section 2806;
- (B) to ensure the protection, comfort, and well-being of the public (including the protection of public safety) with respect to the use of Reclamation lands; and
- (C) to ensure the protection of resource values.

**(b) [Inventory.]—**The Secretary, acting through the Commissioner of Reclamation, is authorized to—(1) prepare and maintain on a continuing basis an inventory of resources and uses made of Reclamation lands and resources, keep records of such inventory, and make such records available to the public; and

(2) ascertain the boundaries of Reclamation lands and provide a means for public identification (including, where appropriate, providing signs and maps).

**(c) [Planning.]—**(1)(A) The Secretary, acting through the Commissioner of Reclamation, is authorized to develop, maintain, and revise resource management plans for Reclamation lands.

(B) Each plan described in subparagraph (A)—

- (i) shall be consistent with applicable laws (including any applicable statute, regulation, or Executive order);
- (ii) shall be developed in consultation with—
  - (I) such heads of Federal and non-Federal departments or agencies as the Secretary determines to be appropriate; and
  - (II) the authorized beneficiaries (as determined by the Secretary) of any Reclamation project included in the plan; and
- (iii) shall be developed with appropriate public participation.

(C) Each plan described in subparagraph (A) shall provide for the development, use, conservation, protection, enhancement, and management of resources of Reclamation lands in a manner that is compatible with the authorized purposes of the Reclamation project associated with the Reclamation lands.

**(d) [Nonreimbursable funds.]—**Funds expended by the Secretary in carrying out the provisions of this title shall be nonreimbursable under the

Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. § 371, and Acts supplementary thereto and amendatory thereof). (106 Stat. 4693, 16 U.S.C. § 460/33.)

**Sec. 2806. [Protection of authorized purposes of Reclamation projects.]**—(a) Nothing in this title shall be construed to change, modify, or expand the authorized purposes of any Reclamation project.

(b) The expansion or modification of a recreational facility constructed under this title shall not increase the capital repayment responsibilities or operation and maintenance expenses of the beneficiaries of authorized purposes of the associated Reclamation project. The term "beneficiaries" does not include those entities who sign agreements or enter into contracts for recreation facilities pursuant to the Federal Water Project Recreation Act. (106 Stat. 4693, 16 U.S.C. § 460/34.)

TITLE XXIX—SAN JUAN SUBURBAN WATER DISTRICT

**Sec. 2901. [Repayment of water pumps, San Juan Suburban Water District, Central Valley Project, California.]**—(a) **[Water pump repayment.]**—The Secretary shall credit to the unpaid capital obligation of the San Juan Suburban Water District (District), as calculated in accordance with the Central Valley Project ratesetting policy, an amount equal to the documented price paid by the District for pumps and motors provided by the District to the Bureau of Reclamation, in 1991 and 1992, for installation at Folsom Dam, Central Valley Project, California.

(b) **[Conditions.]**—(1) The amount credited shall not include any indirect or overhead costs associated with the acquisition of the pumps and motors, such as those associated with the negotiation of a sales price or procurement contract, inspection, and delivery of the pumps and motors from the seller to the Bureau of Reclamation.

(2) The credit is effective on the dates the pumps and motors were delivered to the Bureau of Reclamation for installation at Folsom Dam. (106 Stat. 4693)

TITLE XXX—WESTERN WATER POLICY REVIEW

**Sec. 3001. [Short title.]**—This title may be cited as the "Western Water Policy Review Act of 1992." (106 Stat. 4693, 43 U.S.C. § 371.)

**Sec. 3002. [Congressional findings.]**—The Congress finds that—

- (1) the Nation needs an adequate water supply for all states at a reasonable cost;
- (2) the demands on the Nation's finite water supply are increasing;
- (3) coordination on both the Federal level and the local level is needed to achieve water policy objectives;

October 30, 1992

WESTERN WATER POLICY REVIEW

3919

(4) not less than fourteen agencies of the Federal Government are currently charged with functions relating to the oversight of water policy;

(5) the diverse authority over Federal water policy has resulted in unclear goals and an inefficient handling of the Nation's water policy;

(6) the conflict between competing goals and objectives by Federal, State, and local agencies as well as by private water users is particularly acute in the nineteen Western States which have and climates which include the seventeen reclamation States, Hawaii, and Alaska;

(7) the appropriations doctrine of water allocation which characterizes most western water management regimes varies from State to State, and results in many instances in increased competition for limited resources;

(8) the Federal Government has recognized and continues to recognize the primary jurisdiction of the several States over the allocation, priority, and use of water resources of the States, except to the extent such jurisdiction has been preempted in whole or in part by the Federal Government, including, but not limited to, express or implied Federal reserved water rights either for itself or for the benefit of Indian Tribes, and that the Federal Government will, in exercising its authorities, comply with applicable State laws;

(9) the Federal Government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources;

(10) Federal agencies, such as the Bureau of Reclamation, have had, and will continue to have major responsibilities in assisting States in the wise management and allocation of scarce water resources; and

(11) the Secretary of the Interior, given his responsibilities for management of public land, trust responsibilities for Indians, administration of the reclamation program, investigations and reviews into ground water resources through the Geologic Survey, and the Secretary of the Army, given his responsibilities for flood control, water supply, hydroelectric power, recreation, and fish and wildlife enhancement, have the resources to assist in a comprehensive review, in consultation with appropriate officials from the nineteen Western States, into the problems and potential solutions facing the nineteen Western States and the Federal Government in the increasing competition for the scarce water resources of the Western States. (106 Stat. 4694)

**Sec. 3003. [Presidential review.]—(a) [Reports.]**—The President is directed to undertake a comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources, whether surface or subsurface, and to submit a report on the President's findings, together with recommendations, if any, to the Committees on Energy and Natural Resources, Environment and Public Works and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Public Works and Transportation, Merchant Marine and Fisheries and Appropriations of the House of Representatives.

October 30, 1992

3920

WESTERN WATER POLICY REVIEW

(b) Such report shall be submitted within five years from the date of enactment of this Act.

EXPLANATORY NOTE

**1995 Amendment.** Section 502 of the Act of November 13, 1995 (Public Law 104-46, 109 Stat. 402) provided that, "Notwithstanding the provisions of any other law, the report referred to in title 30 of Public Law 102-575 shall be submitted within five years from the date of enactment of that Act." Prior to the 1995 Act, section 3003 had specified "three" years. Extracts from the 1995 Act appear in Volume V at page 4065.

(c) In conducting the review and preparing the report, the President is directed to consult with the Advisory Commission established under section 3004 of this title, and may request the Secretary of the Interior and the Secretary of the Army or other Federal officials or the Commission to undertake such studies or other analyses as the President determines would assist in the review.

(d) The President shall consult periodically with the Commission, and upon the request of the President, the heads of other Federal agencies are directed to cooperate with and assist the Commission in its activities. (106 Stat. 4694)

**Sec. 3004. [The Advisory Commission.]**—(a) The President shall appoint an Advisory Commission (hereafter in this title referred to as the "Commission") to assist in the preparation and review of the report required under this title.

(b) The Commission shall be composed of eighteen members as follows:

(1) Ten members appointed by the President including:

(A) the Secretary of the Interior or his designee;

(B) the Secretary of the Army or his designee;

(C) at least one representative chosen from a list submitted by the Western Governors Association; and

(D) at least one representative chosen from a list submitted by Tribal governments located in the Western States.

(2) In addition to the ten members appointed by the President, twelve Members from the United States Congress shall serve as ex officio members of the Commission. For the United States Senate: the Chairmen and the Ranking Minority Members of the Committees on Energy and Natural Resources, and Appropriations, and the Subcommittee of the Committee on Energy and Natural Resources which has jurisdiction over the Bureau of Reclamation. For the United States House of Representatives: the Chairman and Ranking Minority Members of the Committees on Interior and Insular Affairs, Public Works and Transportation, and Appropriations.

(c) The President shall appoint one member of the Commission to serve as Chairman.

October 30, 1992

(d) Any vacancy which may occur on the Commission shall be filled in the same manner in which the original appointment was made.

(e) Members of the Commission shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties. (106 Stat. 4695)

**Sec. 3005. [Duties of the Commission.]**—The Commission shall—

(1) review present and anticipated water resource problems affecting the nineteen Western States, making such projections of water supply requirements as may be necessary and identifying alternative ways of meeting these requirements—giving considerations, among other things, to conservation and more efficient use of existing supplies, innovations to encourage the most beneficial use of water and recent technological advances;

(2) examine the current and proposed Federal programs affecting such States and recommend to the President whether they should be continued or adopted and, if so, how they should be managed for the next twenty years, including the possible reorganization or consolidation of the current water resources development and management agencies;

(3) review the problems of rural communities relating to water supply, potable water treatment, and wastewater treatment;

(4) review the need and opportunities for additional storage or other arrangements to augment existing water supplies including, but not limited to, conservation;

(5) review the history, use, and effectiveness of various institutional arrangements to address problems of water allocation, water quality, planning, flood control and other aspects of water development and use, including, but not limited to, interstate water compacts, Federal-State regional corporations, river basin commissions, the activities of the Water Resources Council, municipal and irrigation districts and other similar entities with specific attention to the authorities of the Bureau of Reclamation under reclamation law and the Secretary of the Army under water resources law;

(6) review the legal regime governing the development and use of water and the respective roles of both the Federal Government and the States over the allocation and use of water, including an examination of riparian zones, appropriation and mixed systems, market transfers, administrative allocations, ground water management, interbasin transfers, recordation of rights, Federal-State relations including the various doctrines of Federal reserved water rights (including Indian water rights and the development in several States of the concept of a public trust doctrine); and

(7) review the activities, authorities, and responsibilities of the various Federal agencies with direct water resources management responsibility, including but not limited to the Bureau of Reclamation, the Department of

the Army, and those agencies whose decisions would impact on water resource availability and allocation, including, but not limited to, the Federal Energy Regulatory Commission. (106 Stat. 4696)

**Sec. 3006. [Representatives.]**—(a) The Chairman of the Commission shall invite the Governor of each Western State to designate a representative to work closely with the Commission and its staff in matters pertaining to this title.

(b) The Commission, at its discretion, may invite appropriate public or private interest groups including, but not limited to, Indian and Tribal organizations to designate a representative to work closely with the Commission and its staff in matters pertaining to this title. (106 Stat. 4696)

**Sec. 3007. [Powers of the Commission.]**—(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) use the United States mail in the same manner and upon the same conditions as other departments and agencies of the United States;

(3) enter into contracts or agreements for studies and surveys with public and private organizations and transfer funds to Federal agencies to carry out such aspects of the Commission's functions as the Commission determines can best be carried out in that manner; and

(4) 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.

(c) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for level II of the Executive Schedule.

(1) With the approval of the Commission, the Director may appoint and fix the pay of such personnel as the Director considers appropriate but only to the extent that such personnel cannot be obtained from the Secretary of the Interior or by detail from other Federal agencies. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid 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.

(2) With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

October 30, 1992

MOUNTAIN PARK MASTER CONSERVANCY DISTRICT 3923

(d) The Secretary of the Interior and the Secretary of the Army shall provide such office space, furnishings and equipment as may be required to enable the Commission to perform its functions. The Secretary shall also furnish the Commission with such staff, including clerical support, as the Commission may require. (106 Stat. 4697)

**Sec. 3008. [Powers and duties of the Chairman.]**—(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 paragraphs (2) through (4) of section 3007(a).

(b) The Chairman may make such provisions as he shall deem appropriate authorizing the performance of any of his executive and administrative functions by the Director or other personnel of the Commission. (106 Stat. 4697)

**Sec. 3009. [Other Federal agencies.]**—(a) The Commission shall, to the extent practicable, utilize the services of the Federal water resource agencies.

(b) Upon request of the Commission, the President may direct the head of any other Federal department or agency to assist the Commission and such head of any Federal department or agency 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 3007(a)(7) of this title, 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 the 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 Secretary of the Interior.

**Sec. 3010. [Appropriations.]**—There are hereby authorized to be appropriated not to exceed \$10,000,000 to carry out the purposes of sections 3001 through 3009 of this title. (106 Stat. 4698)

TITLE XXXI—MOUNTAIN PARK MASTER  
CONSERVANCY DISTRICT, OKLAHOMA

**Sec. 3101. [Payment by Mountain Park Master Conservancy District.]**—*Repealed.*

October 30, 1992

3924 MOUNTAIN PARK MASTER CONSERVANCY DISTRICT

EXPLANATORY NOTE

**Section Repealed.** Subsection 402(c) of the Act of October 31, 1994, (Public Law 103-434, 109 Stat. 4538) repealed section 3101 of this Act. The repealed section read as follows:

(a) **[In general.]**—The Secretary shall conduct appropriate investigations regarding, and is authorized to accept prepayment of, the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city, and, upon receipt of such prepayment, the District's obligation to the United States shall be reduced by the amount of such costs.

(b) **[Payment amount.]**—Any prepayment made pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining repayment obligation by the interest rate determined according to this section.

(c) **[Interest rate.]**—The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(d) **[Investigations.]**—In determining the interest rate, the Secretary—

(1) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party, and

(2) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(e) **[Tax-exempt financing.]**—If the borrower or purchaser of the loan has access to tax-exempt financing (including, but not limited to, tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity) to finance the transaction, and if the Office of Management

and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(f) **[Limit on interest rate.]**—Notwithstanding any other provision in this title, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(g) **[Approval.]**—The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any prepayment made pursuant to this title.

(h) **[Termination of authority.]**—The authority granted by this title to sell loans shall terminate two years after the date of enactment of this Act: *Provided*, That the borrower shall have at least sixty days to respond to any prepayment offer made by the Secretary.

(i) **[Title to project facilities.]**—Notwithstanding any payments made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States.

(j) **[Definitions.]**—For the purposes of this section—

(1) the term "city" means the city of Frederick, Oklahoma; the city of Snyder, Oklahoma; or the city of Altus, Oklahoma;

(2) the term "District" means the Mountain Park Master Conservancy District of Mountain Park, Oklahoma;

(3) the term "Project" means the Mountain Park Project, Oklahoma; and

(4) the term "Secretary" means the Secretary of the Interior. (106 Stat. 4698)  
Title IV of the 1994 Act appears in Volume V at page 4023.

October 30, 1992

SOUTH DAKOTA PRESERVATION AND RESTORATION 3925

**Sec. 3102. [Reschedule of repayment obligation.]**—(a) The Secretary shall conduct appropriate investigations regarding the ability of the District to meet its repayment obligation.

(b) If the Secretary finds that the District does not have the ability to pay its repayment obligation, then the Secretary shall offer the District a revised schedule of payments for purposes of meeting the repayment obligation of the District: *Provided*, That such schedule of payments shall—

(1) be consistent with the ability to pay of the District, and

(2) have the same discounted present value as the repayment obligation of the District.

(c) The Secretary shall conduct the investigations and make any offer of a revised schedule of payments pursuant to this section no later than twelve months after the date of enactment of this section. (106 Stat. 4699)

TITLE XXXII—SOUTH DAKOTA PRESERVATION  
AND RESTORATION TRUST

**Subpart A—Biological Diversity Trust**

**Sec. 3201. [South Dakota Biological Diversity Trust.]**—(a) The Secretary, subject to the provisions of subsection (d) of this section, shall make an annual Federal contribution to a South Dakota Biological Diversity Trust established in accordance with subsection (b) of this section and operated in accordance with subsection (c) of this section. Contributions from the State of South Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary. The total Federal contribution pursuant to this section, including subsection (d), shall not exceed \$12,000,000.

(b) A South Dakota Biological Diversity Trust shall be eligible to receive Federal contributions pursuant to subsection (a) of this section if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a nonprofit corporation under the laws of South Dakota with its principal office in South Dakota.

(2) The Trust is under the direction of a Board of Trustees which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board is comprised of five persons appointed as follows, each for a term of five years:

(A) 1 person appointed by the Governor of South Dakota;

(B) 1 person appointed by each United States Senator from South Dakota;

October 30, 1992

3926 SOUTH DAKOTA PRESERVATION AND RESTORATION

(C) 1 person appointed by the United States Representative from South Dakota; and

(D) 1 person appointed by the South Dakota Academy of Science.

(4) Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office. Members of the Board shall serve without compensation.

(5) The corporate purposes of the Trust are to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity, its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems.

(c) A South Dakota Biological Diversity Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) the Trust is operated to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity; its rare species, extraordinary examples of plant and animal communities and large-scale natural ecosystems in accordance with its corporate purpose; and

(2) the Trust is managed in a fiscally responsible fashion by investing in private and public financial vehicles with the goal of producing income and preserving principal. The principal will be inviolate, but income will be used to accomplish the goals of the trust.

(3) Proceeds from the Trust are used for the following purposes:

(A) \$10,000 per year or 5 percent of the total funds expended by the Trust (whichever is larger) will be provided to the South Dakota Natural Heritage Program (currently as part of the South Dakota Game, Fish, and Parks Departments), in order to do the following:

(i) maintain and update the South Dakota Biodiversity Priority Site List;

(ii) conduct inventory to discover and survey new sites for the Priority Site List; and

(iii) manage data to maintain the Natural Heritage Databases needed to produce and document the Priority Site List. (106 Stat. 4700)

(B) Up to 5 percent of the costs of each project are used for preserve design or site planning to ensure that sites are selected for funding which are well designed to maintain the long-term viability of the significant species and communities found at the site.

October 30, 1992

SOUTH DAKOTA PRESERVATION AND RESTORATION 3927

(C) Proceeds from the Trust may be used to complete land protection projects designed to protect biological diversity.

(D) Projects may include acquisition of land, water rights or other partial interests from willing sellers only, or arranging management agreements, registry and other techniques to protect significant sites.

(E) Ownership of land acquired with Trust proceeds will be held by the public agency or private non-profit organization which proposed and completed the project, or another conservation owner with the approval of the Board. The land will be managed and used for the protection of biological diversity. If the property is used or managed otherwise, title will revert to the Trust for disposition.

(F) Projects eligible for funding must be included on the South Dakota Biodiversity Priority List and located within the borders of South Dakota.

(G) At the discretion of the Board, Trust proceeds may be used for direct project costs including direct expenses incurred during project completion. Land project funding may also include the creation of a stewardship endowment subject to the following terms:

(i) Up to 25 percent of the total fair market value of the project may be placed in a separate endowment.

(ii) The proceeds from the endowment will be used for the ongoing management costs of maintaining the biological integrity and viability of the significant biological features of the site.

(iii) Endowment funds may not be used for activities which primarily promote recreational or economic use of the site.

(iv) The endowment for each site will be held in a separate account from the body of the Trust and other endowments. The endowments will be managed by the Trust Board but the owner or manager of the site may draw upon the proceeds of the stewardship endowment to fund management activities with approval of the Board. Additional management funds may be secured from other public sources.

(H) Should the biological significance of a site be destroyed or greatly reduced, the land may be disposed of but the proceeds and any stewardship endowment will revert to the Trust for use in other projects.

(I) Proceeds from the Trust may be used for management of public or private lands, including but not restricted to lands purchased with Trust funds, except that only those management projects that result in the maintenance or restoration of statewide biological diversity are eligible for consideration.

(d) For each fiscal year after 1992, 2 percent of the Federal contributions for the same fiscal year, determined pursuant to subsection (a) of this section, shall be used by the Secretary in order to do the following:

(1) restore damaged natural ecosystems on public lands and waterways affected by the Reclamation program outside South Dakota;

October 30, 1992

3928 SOUTH DAKOTA PRESERVATION AND RESTORATION

(2) acquire from willing sellers only other lands and properties or appropriate interests therein outside South Dakota with restorable damaged natural ecosystems and restore such ecosystems;

(3) provide jobs and suitable economic development in a manner that carries out the other purposes of this subsection;

(4) provide expanded recreational opportunities; and

(5) support and encourage research, training and education in methods and technologies of ecosystem restoration. (106 Stat. 4700)

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties (or appropriate interests therein) where repair of compositional, structural and functional values will do the following:

(1) reconstitute natural biological diversity that has been shed;

(2) assist the recovery of species populations, communities and ecosystems that are unable to survive onsite without intervention;

(3) allow reintroduction and reoccupation by native flora and fauna;

(4) control or eliminate exotic flora and fauna which are damaging natural ecosystems;

(5) restore natural habitat for the recruitment and survival of fish, waterfowl and other wildlife;

(6) provide additional conservation values to state and local government lands;

(7) add to structural and compositional values of existing preserves or enhance the viability, defensibility and manageability of preserves; and

(8) restore natural hydrological effects including sediment and erosion control, drainage, percolation and other water quality improvement capacity.

**(f) [Reports.]**—The Secretary shall annually report on activities under this section to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives.

(g) There are authorized to be appropriated not to exceed \$12,000,000 for the purposes of this title. (106 Stat. 4700 - 4703)

**Subpart B—Wetland Habitat Restoration Program**

**Sec. 3202. [Definitions.]**—(1) The term "Foundation" means the South Dakota Game, Fish and Parks Foundation, a nonprofit corporation under the laws of the State of South Dakota with its principal office in South Dakota.

(2) The term "wetland trust" means a trust established in accordance with section 3602(b) and operated in accordance with section 3602(c).

October 30, 1992

SOUTH DAKOTA PRESERVATION AND RESTORATION 3929

**Sec. 3203. [Wetland trust.]—(a) [Federal contributions.]—**Subject to appropriations therefor, the Secretary shall make a Federal contribution to a wetland trust that is—

- (1) established in accordance with subsection (b); and
- (2) operated in accordance with subsection (c), in the amount of \$3,000,000 in the first year in which a contribution is made and \$1,000,000 in each of the following four years.

**(b) [Establishment of wetland trust.]—**A wetland trust is established in accordance with this subsection if—

- (1) the wetland trust is administered by the Foundation;
- (2) the Foundation is under the direction of a Board of Directors that has power to manage all affairs of the Foundation, including administration, data collection, and implementation of the purposes of the wetland trust;
- (3) members of the Board of Directors of the Foundation serve without compensation;
- (4) the corporate purposes of the Foundation in administering the wetland trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of South Dakota;
- (5) an advisory committee is created to provide the Board of Directors of the Foundation with necessary technical expertise and the benefit of a multiagency perspective;
- (6) the advisory committee described in paragraph (5) is composed of—
  - (A) 1 member of the staff of the Wildlife Division of the South Dakota Department of Game, Fish and Parks, appointed by the Secretary of that department;
  - (B) 1 member of the United States Fish and Wildlife Service, appointed by the Director of Region 6 of the United States Fish and Wildlife Service;
  - (C) 1 representative from the Department of Agriculture, as determined by the Secretary of Agriculture; and
  - (D) 3 residents of the State of South Dakota who are members of wildlife or environmental organizations, appointed by the Governor of the State of South Dakota; and
- (7) the wetland trust is empowered to accept non-Federal donations, gifts, and grants. (106 Stat. 4703)

**(c) [Operation of wetland trust.]—**The wetland trust shall be considered to be operated in accordance with this subsection if—

- (1) the wetland trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of South Dakota;
- (2) under the corporate charter of the Foundation, the Board of Directors, acting on behalf of the Foundation, is empowered to—
  - (A) acquire lands and interests in land and power to acquire water rights (but only with the consent of the owner);
  - (B) acquire water rights; and

October 30, 1992

3930 SOUTH DAKOTA PRESERVATION AND RESTORATION

(C) finance wetland preservation, enhancement, and restoration programs;

(3)(A) all funds provided to the wetland trust under subsection (a) are to be invested in accordance with subsection (d);

(B) no part of the principal amount (including capital gains thereon) of such funds are to be expended for any purpose;

(C) the income received from the investment of such funds is to be used only for purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d);

(D) income earned by the wetland trust (including income from investments made with funds other than those provided to the wetland trust under subsection (a)) is used to—

(i) enter into joint ventures, through the Division of Wildlife of the South Dakota Department of Game, Fish and Parks, with public and private entities or with private landowners to acquire easements or leases or to purchase wetland and adjoining upland; or

(ii) pay for operation and maintenance of the wetland component;

(E) when it is necessary to acquire land other than wetland and adjoining upland in connection with an acquisition of wetland and adjoining upland, wetland trust funds (including funds other than those provided to the wetland trust under subsection (a) and income from investments made with such funds) are to be used only for acquisition of the portions of land that contain wetland and adjoining upland that is beneficial to the wetland;

(F) all land purchased in fee simple with wetland trust funds shall be dedicated to wetland preservation and use; and

(G)(i) proceeds of the sale of land or any part thereof that was purchased with wetland trust funds are to be remitted to the wetland trust;

(ii) management, operation, development, and maintenance of lands on which leases or easements are acquired;

(iii) payment of annual lease fees, one-time easement costs, and taxes on land areas containing wetlands purchased in fee simple;

(iv) payment of personnel directly related to the operation of the wetland trust, including administration; and

(v) contractual and service costs related to the management of wetland trust funds, including audits.

(4) the Board of Directors of the Foundation agrees to provide such reports as may be required by the Secretary and makes its records available for audit by Federal agencies; and

(5) the advisory committee created under subsection (b)—

(A) recommends criteria for wetland evaluation and selection: *Provided*, That income earned from the Trust shall not be used to mitigate or

October 30, 1992

ELEPHANT BUTTE IRRIGATION DISTRICT

3931

compensate for wetland damage caused by Federal water projects;

(B) recommends wetland parcels for lease, easement, or purchase and states reasons for its recommendations; and

(C) recommends management and development plans for parcels of land that are purchased. (106 Stat. 4703)

**(d) [Investment of wetland trust funds.]**—(1) The Secretary, in consultation with the Secretary of the Treasury, shall establish requirements for the investment of all funds received by the wetland trust under subsection (a) or reinvested under subsection (c)(3).

(2) The requirements established under paragraph (1) shall ensure that—

(A) funds are invested in accordance with sound investment principles;

and

(B) the Board of Directors of the Foundation manages such investments and exercises its fiduciary responsibilities in an appropriate manner.

**(e) [Coordination with the Secretary of Agriculture.]**—(1) The Secretary shall make the Federal contribution under subsection (a) after consulting with the Secretary of Agriculture to provide for the coordination of activities under the wetland trust established under subsection (b) with the water bank program, the wetlands reserve program, and any similar Department of Agriculture programs providing for the protection of wetlands.

(2) The Secretary of Agriculture shall take into consideration wetland protection activities under the wetland trust established under subsection (b) when considering whether to provide assistance under the water bank program, the wetlands reserve program, and any similar Department of Agriculture programs providing for the protection of wetlands.

**Sec. 3204. [Authorization of appropriations.]**—There is authorized to be appropriated to the Secretary \$7,000,000 for the Federal contribution to the wetland trust established under section 3203. (106 Stat. 4703 - 4705)

TITLE XXXIII—ELEPHANT BUTTE IRRIGATION  
DISTRICT, NEW MEXICO

**Sec. 3301. [Transfer.]**—The Secretary is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, and El Paso County Water Improvement District No. 1, Texas, without cost to the respective district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving the respective district's lands and which the Secretary determines are necessary to enable the respective district to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant

October 30, 1992

3932 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, jointly, upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the respective district assume responsibility for operating and maintaining their portion of the project.

**Sec. 3302. [Limitation.]**—Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

**Sec. 3303. [Effect of act on other laws.]**—Nothing in this title shall affect any right, title, interest or claim to land or water, if any, of the Ysleta del Sur Pueblo, a federally recognized Indian Tribe. (106 Stat. 4705)

TITLE XXXIV—CENTRAL VALLEY PROJECT IMPROVEMENT ACT

**Sec. 3401. [Short title.]**—This title may be cited as the "Central Valley Project Improvement Act". (106 Stat. 4706)

**Sec. 3402. [Purposes.]**—The purposes of this title shall be—

(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;

(b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;

(c) to improve the operational flexibility of the Central Valley Project;

(d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;

(e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento San Joaquin Delta Estuary;

(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors. (106 Stat. 4706)

**Sec. 3403. [Definitions.]**—As used in this title—(a) the term "anadromous fish" means those stocks of salmon (including steelhead), striped bass, sturgeon, and American shad that ascend the Sacramento and San Joaquin rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in San Francisco Bay or the Pacific Ocean;

(b) the terms "artificial propagation" and "artificial production" mean spawning, incubating, hatching, and rearing fish in a hatchery or other facility constructed for fish production;

(c) the term "Central Valley Habitat Joint Venture" means the association of Federal and State agencies and private parties established for the purpose of

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3933

developing and implementing the North American Waterfowl Management Plan as it pertains to the Central Valley of California;

(d) the terms "Central Valley Project" or "project" mean all Federal reclamation projects located within or diverting water from or to the watershed of the Sacramento and San Joaquin rivers and their tributaries as authorized by the Act of August 26, 1937 (50 Stat. 850) and all Acts amendatory or supplemental thereto, including but not limited to the Act of October 17, 1940 (54 Stat. 1198, 1199), Act of December 22, 1944 (58 Stat. 887), Act of October 14, 1949 (63 Stat. 852), Act of September 26, 1950 (64 Stat. 1036), Act of August 27, 1954 (68 Stat. 879), Act of August 12, 1955 (69 Stat. 719), Act of June 3, 1960 (74 Stat. 156), Act of October 23, 1962 (76 Stat. 1173), Act of September 2, 1965 (79 Stat. 615), Act of August 19, 1967 (81 Stat. 167), Act of August 27, 1967 (81 Stat. 173), Act of October 23, 1970 (84 Stat. 1097), Act of September 28, 1976 (90 Stat. 1324) and Act of October 27, 1986 (100 Stat. 3050).

EXPLANATORY NOTE

**References in the Text.** The Act of August 26, 1937 (ch. 832, 50 Stat. 850) referenced above appears in Volume I at page 583.

The Act of October 17, 1940 (ch. 895, 54 Stat. 1198) appears in Volume I at page 711.

The Act of December 22, 1944 (ch. 665, 58 Stat. 887) appears in Volume II at page 796. Amendments and annotations to the 1944 Act appear in Supplement I at page S147 and Supplement II at page S861.

The Act of October 14, 1949 (ch. 690, 63 Stat. 852) appears in Volume II at page 978. Annotations to the 1949 Act appear in Supplement I at page S194.

The Act of September 26, 1950 (ch. 1047, 64 Stat. 1036) appears in Volume II at page 1032. Amendments and annotations to the 1950 Act appear in Supplement I at page S202 and in Supplement II at page S866.

The Act of August 27, 1954 (ch. 1012, 68 Stat. 879) appears in Volume II at page 1191. Amendments and annotations to the 1954 Act appear in Supplement I at page S229.

The Act of August 12, 1955 (872, 69 Stat. 719) appears in Volume II at page 1235. Annotations to the 1955 Act appear in Supplement I at page S242.

The Act of June 3, 1960 (Public Law 86-488, 74 Stat. 156) appears in Volume III at

page 1524. Annotations of the 1960 Act appear in Supplement I at page S295.

The Act of October 23, 1962 (Public Law 87-874, 76 Stat. 1173) appears in Volume III at page 1701. Amendments and annotations to the 1962 Act appear in Supplement I at page S338 and Supplement II at S889.

The Act of September 2, 1965 (Public Law 89-161, 79 Stat. 615) appears in Volume III at page 1847. Annotations to the 1965 Act appear in Supplement I at page S405.

The Act of August 19, 1967 (Public Law 90-65, 81 Stat. 167) appears in Volume IV at page 2332.

The Act of August 27, 1967 (Public Law 90-72, 81 Stat. 173) appears in Volume IV at page 2333.

The Act of October 23, 1970 (Public Law 91-502, 84 Stat. 1097) appears in Volume IV at page 2549.

The Act of September 28, 1976 (Public Law 94-423, 90 Stat. 1324) appears in Volume IV at page 2951. See page 2956 regarding Allen Camp Unit, Pit River division, Central Valley Project. Annotations and amendments appear in Supplement II at page S1054.

The Act of October 27, 1986 (99-546, 100 Stat. 3050) appears in Volume V at page 3512.

October 30, 1992

3934 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

(e) the term "Central Valley Project service area" means that area of the Central Valley and San Francisco Bay Area where water service has been expressly authorized pursuant to the various feasibility studies and consequent congressional authorizations for the Central Valley Project;

(f) the term "Central Valley Project water" means all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(g) the term "full cost" has the meaning given such term in paragraph (3) of section 202 of the Reclamation Reform Act of 1982;

EXPLANATORY NOTE

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

(h) the term "natural production" means fish produced to adulthood without direct human intervention in the spawning, rearing, or migration processes;

(i) the term "Reclamation laws" means the Act of June 17, 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto;

(j) the term "Refuge Water Supply Report" means the report issued by the Mid-Pacific Region of the Bureau of Reclamation of the U.S. Department of the Interior entitled Report on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California (March 1989);

(k) the terms "repayment contract" and "water service contract" have the same meaning as provided in sections 9(d) and 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1195), as amended;

(l) the terms "Restoration Fund" and "Fund" mean the Central Valley Project Restoration Fund established by this title; and,

(m) the term "Secretary" means the Secretary of the Interior.

**Sec. 3404. [Limitation on contracting and contract reform.]—(a) [New contracts.]—**Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:

(1) the provisions of subsections 3406(b)-(d) of this title are met;

(2) the California State Water Resources Control Board concludes the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82 (1986) and determines the means of implementing its decision, including the obligations of the Central Valley Project, if any, and the Administrator of the Environmental Protection Agency shall have approved such decision pursuant to existing authorities; and,

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3935

(3) at least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving its responsibilities for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as finally established and approved by relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.

**(b) [Exceptions to limit on new contracts.]**—The prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts executed pursuant to section 305 of Public Law 102-250 or section 206 of Public Law 101-514 or to one-year contracts for delivery of surplus flood flows or contracts not to exceed two years in length for delivery of class II water in the Friant Unit. Notwithstanding the prohibition in the Energy and Water Development Appropriations Act of 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962, to enter into a long-term contract in accordance with the Reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county's water distribution system and a contract with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of the San Joaquin Valley National Cemetery, California.

EXPLANATORY NOTE

**References in the Text.** The Act of March 5, 1992 (Public Law 102-250, 106 Stat. 53) referenced above appears in Volume V at page 3738.

Extracts from the Act of November 5, 1990 (Public Law 101-514 referenced above appears in Volume V at page 3660.

Extracts from the Energy and Water Development Appropriations Act of 1990, Act of September 29, 1989 (Public Law 101-101,

103 Stat. 641) referenced above, (about the referenced proviso), appear in Volume V at page 3648.

The Flood Control Act of 1962, Act of October 23, 1962 (Public Law 87-874, 76 Stat. 1173) referenced above appears in Volume III at page 1701. Amendments and annotations of the 1962 Act appear in Supplement I at page S338 and Supplement II at page S889.

**(c) [Renewal of existing long-term contracts.]**—Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of twenty-five years and may renew such contracts for successive periods of up to 25 years each.

October 30, 1992

3936 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

EXPLANATORY NOTE

**Reference in the Text.** The Act of July 2, 1956 (ch. 492, 70 Stat. 483) referenced above appears in Volume II at page 1275. Amendments and annotations of the 1956 Act appear in Supplement I at page S262.

(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in said contracts a provision requiring payment of the charge mandated in subsection 3406(c) and subsection 3407(b) of this title and all other modifications needed to comply with existing law, including provisions of this title. This title shall be deemed "applicable law" as that term is used in Article 14(c) of contracts renewed by the Secretary since January 1, 1988.

(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.

(3) In order to encourage early renewal of project water contracts and facilitate timely implementation of this title, the Secretary shall impose on existing contractors an additional mitigation and restoration payment of one and one-half times the annual mitigation and restoration payment calculated under subsection 3407(d) of this title for every year starting October 1, 1997 or January 1 of the year following the year in which the environmental impact statement required under section 3409 is completed, whichever is sooner, and ending on the effective date of the renewed contract payable prior to the renewal of such contract, to be covered to the Restoration Fund: *Provided, however,* That this paragraph shall not apply to contracts renewed after January 1, 1988, and prior to the date of enactment of this title or, in the event the environmental impact statement required by section 3409 is not completed by October 1, 1997, to any holder of a contract in existence on the date of enactment of this title who enters into a binding agreement with the Secretary prior to October 1, 1997, to renew its contract

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3937

immediately upon completion of that environmental impact statement, if such contract has not expired prior to such date. (106 Stat. 4709)

**Sec. 3405. [Water transfers, improved water management and Conservation.]—(a) [Water transfers.]**—In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian tribe, or private nonprofit organization for project purposes or any purpose recognized as beneficial under applicable State law. Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.

**(1) [Conditions for transfers.]**—All transfers to Central Valley Project water authorized by this subsection shall be subject to review and approval by the Secretary under the conditions specified in this subsection. Transfers involving more than 20 percent of the Central Valley Project water subject to long-term contract within any contracting district or agency shall also be subject to review and approval by such district or agency under the conditions specified in this subsection:

(A) No transfer to combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.

(B) All water under the contract which is transferred under authority of this subsection to any district or agency which is not a Central Valley Project contractor at the time of enactment of this title shall, if used for irrigation purposes, be repaid at the greater of the full-cost or cost of service rates, or, if the water is used for municipal and industrial purposes, at the greater of the cost of service or municipal and industrial rates.

(C) No transfers authorized by this subsection shall be approved unless the transfer is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon.

(D) No transfer authorized by this subsection shall be approved unless the transfer is consistent with State law, including but not limited to provisions of the California Environmental Quality Act.

(E) All transfers authorized by this subsection shall be deemed a beneficial use of water by the transferor for the purposes of section 8 of the Act of June 17, 1902, 32 Stat. 390,43 U.S.C. § 372.

October 30, 1992

3938 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

(F) All transfers entered into pursuant to this subsection for uses outside the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's total costs associated with the development and negotiation of the transfer.

(G) No transfer authorized by this subsection shall be considered by the Secretary as conferring supplemental or additional benefits on Central Valley Project water contractors as provided in section 203 of Public Law 97-293 (43 U.S.C. § 390(cc)).

(H) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary has determined, consistent with paragraph 3405(a)(2) of this title, that the transfer will not violate the provisions of this title or other Federal law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations or fish and wildlife obligations under this title because of limitations in conveyance or pumping capacity. (106 Stat. 4709)

(G) The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.

(J) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no significant long-term adverse impact on groundwater conditions in the transferor's service area.

(K) The Secretary shall not approve a transfer unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no unreasonable impact on the water supply, operations, or financial conditions of the transferor's contracting district or agency or its water users.

(L) The Secretary shall not approve a transfer if the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, unless the Secretary determines pursuant to findings setting forth the basis for such determination that such adverse effects would be more than offset by the benefits of the proposed transfer. In the event of such a determination, the Secretary shall develop and implement alternative measures and mitigation activities as integral and concurrent

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3939

elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer.

(M) Transfers between Central Valley Project contractors within countries, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs (A) and (1) of this paragraph.

**(2) [Review and approval of transfers.]**—All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:

(A) Decisions on water transfers subject to review by a contracting district or agency or by the Secretary shall be rendered within ninety days of receiving a written transfer proposal from the transferee or transferor. Such written proposal should provide all information reasonably necessary to determine whether the transfer complies with the terms and conditions of this subsection.

(B) All transfers subject to review by a contracting district or agency shall be reviewed in a public process similar to that provided for in section 226 of Public Law 97-293.

(C) The contracting district or agency or the Secretary shall approve all transfers subject to review and approval by such entity if such transfers are consistent with the terms and conditions of this subsection. To disapprove a transfer, the contracting district or agency or the Secretary shall inform the transferee and transferor, in writing, why the transfer does not comply with the terms and conditions of this subsection and what alternatives, if any, could be included so that the transfer would reasonably comply with the requirements of this subsection. (106 Stat. 4709)

(D) If the contracting district or agency or the Secretary fails to approve or disapprove a proposed transfer within ninety days of receiving a complete written proposal from the transferee or transferor, then the transfer shall be deemed approved.

(3) Transfers executed after September 30, 1999 shall only be governed by the provisions of subparagraphs 3405(a)(1)(A)- (C), (E), (G), (H), (I), (L), and (M) of this title, and by State law.

**(b) [Metering and reporting of water use required.]**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so

October 30, 1992

3940 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

equipped. The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.

**(c) [State and Federal water quality standards.]**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall be responsible for compliance with all applicable State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated within its boundaries. This subsection shall not affect or alter any legal obligation of the Secretary to provide drainage services. (106 Stat. 4709)

**(d) [Water pricing reform.]**—All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:

(1) the first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall not be less than the applicable contract rate;

(2) the second rate tier shall apply to that quantity of water over 80 percent and under 90 percent of the contract total and shall be at a level halfway between the rates established under paragraphs (1) and (3) of this subsection;

(3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and

(4) the Secretary shall charge contractors only for water actually delivered. The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced: *Provided*, That such waiver shall apply only if such habitat values can be assured consistent with the purposes of this title through binding agreements executed with or approved by the Secretary.

**(e) [Water conservation standards.]**—The Secretary shall establish and administer an office of Central Valley Project water conservation best management practices that shall, in consultation with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, develop criteria

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3941

for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.

(1) Criteria developed pursuant to this subsection shall be established within six months following enactment of this title and shall be reviewed periodically thereafter, but no less than every three years, with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices. The criteria shall include, but not be limited to agricultural water suppliers' efficient water management practices developed pursuant to California State law or reasonable alternatives.

(2) The Secretary, through the office established under this subsection, shall review and evaluate within 18 months following enactment of this title all existing conservation plans submitted by project contractors to determine whether they meet the conservation and efficiency criteria established pursuant to this subsection.

(3) In developing the water conservation best management practice criteria required by this subsection, the Secretary shall take into account and grant substantial deference to the recommendations for action specific to water conservation and drainage source reduction proposed in the Final Report of the San Joaquin Valley Drainage Program, entitled A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley (September 1990).

**(f) [Increased revenues.]**—All revenues received by the Secretary as a result of the increased repayment rates applicable to water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund. (106 Stat. 4709)

**Sec. 3406. [Fish, wildlife and habitat restoration.]—(a) [Amendments to Central Valley Project authorizations.]**—Act of August 26, 1937- Section 2 of the Act of August 26, 1937 (chapter 832; 50 Stat. 850), as amended, is amended—

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

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

(3) by adding at the end the following: "The mitigation for fish and wildlife losses incurred as a result of construction, operation, or maintenance of the Central Valley Project shall be based on the replacement of ecologically equivalent habitat and shall take place in accordance with the provisions of

October 30, 1992

3942 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

this title and concurrent with any future actions which adversely affect fish and wildlife populations or their habitat but shall have no priority over them."; and

(4) by adding at the end the following: "(e) Nothing in this title shall affect the State's authority to condition water rights permits for the Central Valley Project."

**(b) [Fish and wildlife restoration activities.]**—The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under State and Federal law, including but not limited to the Federal Endangered Species Act, 16 U.S.C. § 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. The Secretary, in consultation with other State and Federal agencies, Indian tribes, and affected interests, is further authorized and directed to:

(1) develop within three years of enactment and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967-1991; *Provided*, That this goal shall not apply to the San Joaquin River between Friant Dam and the Mendota Pool, for which a separate program is authorized under subsection 3406(c) of this title; *Provided further*, That the programs and activities authorized by this section shall, when fully implemented, be deemed to meet the mitigation, protection, restoration, and enhancement purposes established by subsection 3406(a) of this title; *And provided further*, That in the course of developing and implementing this program the Secretary shall make all reasonable efforts consistent with the requirements of this section to address other identified adverse environmental impacts of the Central Valley Project not specifically enumerated in this section. (106 Stat. 4714)

EXPLANATORY NOTE

**Reference in the Text.** The Endangered Species Act of 1973, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884) referenced above appears in Volume IV at page 2782.

(A) This program shall give first priority to measures which protect and restore natural channel and riparian habitat values through habitat restoration actions, modifications to Central Valley Project operations, and implementation of the supporting measures mandated by this subsection; shall be reviewed and updated every five years; and shall describe how the Secretary intends to operate the Central Valley Project

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3943

to meet the fish, wildlife, and habitat restoration goals and requirements set forth in this title and other project purposes.

(B) As needed to achieve the goals of this program, the Secretary is authorized and directed to modify Central Valley Project operations to provide flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish, except that such flows shall be provided from the quantity of water dedicated to fish, wildlife, and habitat restoration purposes under paragraph (2) of this subsection; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. Instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the United States Fish and Wildlife Service after consultation with the California Department of Fish and Game.

(C) The Secretary shall cooperate with the State of California to ensure that, to the greatest degree practicable, the specific quantities of yield dedicated to and managed for fish and wildlife purposes under this title are credited against any additional obligations of the Central Valley Project which may be imposed by the State of California following enactment of this title, including but not limited to increased flow and reduced export obligations which may be imposed by the California State Water Resources Control Board in implementing San Francisco Bay/Sacramento-San Joaquin Delta Estuary standards pursuant to the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal. App.3d 82 (1986), and that, to the greatest degree practicable, the programs and plans required by this title are developed and implemented in a way that avoids inconsistent or duplicative obligations from being imposed upon Central Valley Project water and power contractors. (106 Stat. 4714)

(D) Costs associated with this paragraph shall be reimbursable pursuant to existing statutory and regulatory procedures.

(2) upon enactment of this title dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act. For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928-1934

October 30, 1992

3944 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met.

(A) Such quantity of water shall be in addition to the quantities needed to implement paragraph 3406(d)(1) of this title and in addition to all water allocated pursuant to paragraph (23) of this subsection for release to the Trinity River for the purposes of fishery restoration, propagation, and maintenance; and shall be supplemented by all water that comes under the Secretary's control pursuant to subsections 3406(b)(3), 3408(h)-(i), and through other measures consistent with subparagraph 3406(b)(1)(B) of this title.

(B) Such quantity of water shall be managed pursuant to conditions specified by the United States Fish and Wildlife Service after consultation with the Bureau of Reclamation and the California Department of Water Resources and in cooperation with the California Department of Fish and Game.

(C) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors; *Provided further*, That nothing in this subsection or subsection 3406(e) shall require the Secretary to operate the project in a way that jeopardizes human health or safety.

(D) If the quantity of water dedicated under this paragraph, or any portion thereof, is not needed for the purposes of this section, based on a finding by the Secretary, the Secretary is authorized to make such water available for other project purposes.

(3) develop and implement a program in coordination and in conformance with the plan required under paragraph (1) of this subsection for the acquisition of a water supply to supplement the quantity of water dedicated to fish and wildlife purposes under paragraph (2) of this subsection and to fulfill the Secretary's obligations under paragraph 3406(d)(2) of this title. The program should identify how the Secretary intends to utilize, in particular the following options: improvements in or modifications of the operations of the project; water banking; conservation; transfers; conjunctive use; and temporary and permanent land fallowing, including purchase, lease, and option of water, water rights, and associated agricultural land. (106 Stat. 4714)

(4) develop and implement a program to mitigate for fishery impacts associated with operations of the Tracy Pumping Plant. Such program shall

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3945

include, but is not limited to improvement or replacement of the fish screens and fish recovery facilities and practices associated with the Tracy Pumping Plant. Costs associated with this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California. The reimbursable share of funding for this and other facility repairs, improvements, and construction shall be allocated among project water and power users in accordance with existing project cost allocation procedures.

(5) develop and implement a program to mitigate for fishery impacts resulting from operations of the Contra Costa Canal Pumping Plant No. 1. Such program shall provide for construction and operation of fish screening and recovery facilities, and for modified practices and operations. Costs associated with this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(6) install and operate a structural temperature control device at Shasta Dam and develop and implement modifications in CVP operations as needed to assist in the Secretary's efforts to control water temperatures in the upper Sacramento River in order to protect anadromous fish in the upper Sacramento River. Costs associated with planning and construction of the structural temperature control device shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(7) meet flow standards and objectives and diversion limits set forth in all laws and judicial decisions that apply to Central Valley Project facilities, including, but not limited to, provisions of this title and all obligations of the United States under the "Agreement Between the United States and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated May 20, 1985, as well as Public Law 99-546. (106 Stat. 4714)

EXPLANATORY NOTE

<b>Reference in the Text.</b> The Agreement Between the United States and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water	Project, dated May 20, 1985, does not appear herein. The Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3050) appears in Volume V at page 3512.
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(8) make use of short pulses of increased water flows to increase the survival of migrating anadromous fish moving into and through the Sacramento-San Joaquin Delta and Central Valley rivers and streams.

October 30, 1992

3946 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

(9) develop and implement a program to eliminate, to the extent possible, losses of anadromous fish due to flow fluctuations caused by the operation of any Central Valley Project storage or re-regulating facility. The program shall be patterned where appropriate after the agreement between the California Department of Water Resources and the California Department of Fish and Game with respect to the operation of the California State Water Project Oroville Dam complex.

(10) develop and implement measures to minimize fish passage problems for adult and juvenile anadromous fish at the Red Bluff Diversion Dam in a manner that provides for the use of associated Central Valley Project conveyance facilities for delivery of water to the Sacramento Valley National Wildlife Refuge complex in accordance with the requirements of subsection (d) of this section. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(11) rehabilitate and expand the Coleman National Fish Hatchery by implementing the United States Fish and Wildlife Service's Coleman National Fish Hatchery Development Plan, and modify the Keswick Dam Fish Trap to provide for its efficient operation at all project flow release levels and modify the basin below the Keswick Dam spillway to prevent the trapping of fish. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 50 percent shall be reimbursed as main project features and 50 percent shall be considered a nonreimbursable Federal expenditure. (106 Stat. 4714)

(12) develop and implement a comprehensive program to provide flows to allow sufficient spawning, incubation, rearing, and outmigration for salmon and steelhead from Whiskeytown Dam as determined by instream flow studies conducted by the California Department of Fish and Game after Clear Creek has been restored and a new fish ladder has been constructed at the McCormick-Saeltzer Dam. Costs associated with channel restoration, passage improvements, and fish ladder construction required by this paragraph shall be allocated 50 percent to the United States as a nonreimbursable expenditure and 50 percent to the State of California. Costs associated with providing the flows required by this paragraph shall be allocated among project purposes.

(13) develop and implement a continuing program for the purpose of restoring and replenishing, as needed, spawning gravel lost due to the construction and operation of Central Valley Project dams, bank protection projects, and other actions that have reduced the availability of spawning gravel and rearing habitat in the Upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam, and in the American and Stanislaus Rivers downstream from the Nimbus and Goodwin Dams, respectively. The

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3947

program shall include preventive measures, such as re-establishment of meander belts and limitations on future bank protection activities, in order to avoid further losses of instream and riparian habitat. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(14) develop and implement a program which provides for modified operations and new or improved control structures at the Delta Cross Channel and Georgiana Slough during times when significant numbers of striped bass eggs, larvae, and juveniles approach the Sacramento River intake to the Delta Cross Channel or Georgiana Slough. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(15) construct, in cooperation with the State of California and in consultation with local interests, a barrier at the head of Old River in the Sacramento-San Joaquin Delta to be operated on a seasonal basis to increase the survival of young outmigrating salmon that are diverted from the San Joaquin River to Central Valley Project and State Water Project pumping plants and in a manner that does not significantly impair the ability of local entities to divert water. The costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(16) establish, in cooperation with independent entities and the State of California, a comprehensive assessment program to monitor fish and wildlife resources in the Central Valley to assess the biological results and effectiveness of actions implemented pursuant to this subsection. 37.5 percent of the costs associated with implementation of this paragraph shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(17) develop and implement a program to resolve fishery passage problems at the Anderson-Cottonwood Irrigation District Diversion Dam as well as upstream stranding problems related to Anderson-Cottonwood Irrigation District Diversion Dam operations. Costs associated with implementation of this paragraph shall be allocated 50 percent to the United States as a nonreimbursable expenditure and 50 percent to the State of California. (106 Stat. 4714)

(18) if requested by the State of California, assist in developing and implementing management measures to restore the striped bass fishery of

October 30, 1992

3948 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

the Bay-Delta estuary. Such measures shall be coordinated with efforts to protect and restore native fisheries. Costs associated with implementation of this paragraph shall be allocated 50 percent to the United States and 50 percent to the State of California. The United States' share of costs associated with implementation of this paragraph shall be nonreimbursable.

(19) reevaluate existing operational criteria in order to maintain minimum carryover storage at Sacramento and Trinity River reservoirs to protect and restore the anadromous fish of the Sacramento and Trinity Rivers in accordance with the mandates and requirements of this subsection and subject to the Secretary's responsibility to fulfill all project purposes, including agricultural water delivery.

(20) participate with the State of California and other Federal agencies in the implementation of the on-going program to mitigate fully for the fishery impacts associated with operations of the Glenn-Colusa Irrigation District's Hamilton City Pumping Plant. Such participation shall include replacement of the defective fish screens and fish recovery facilities associated with the Hamilton City Pumping Plant. This authorization shall not be deemed to supersede or alter existing authorizations for the participation of other Federal agencies in the mitigation program. Seventy-five percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(21) assist the State of California in efforts to develop and implement measures to avoid losses of juvenile anadromous fish resulting from unscreened or inadequately screened diversions on the Sacramento and San Joaquin rivers, their tributaries, the Sacramento-San Joaquin Delta, and the Suisun Marsh. Such measures shall include but shall not be limited to construction of screens on unscreened diversions, rehabilitation of existing screens, replacement of existing non-functioning screens, and relocation of diversions to less fishery-sensitive areas. The Secretary's share of costs associated with activities authorized under this paragraph shall not exceed 50 percent of the total cost of any such activity.

(22) provide such incentives as the Secretary determines to be appropriate or necessary, consistent with the goals and objectives of this title, to encourage farmers to participate in a program, which the Secretary shall develop, under which such farmers will keep fields flooded during appropriate time periods for the purposes of waterfowl habitat creation and maintenance and for Central Valley Project yield enhancement; *Provided*, That such incentives shall not exceed \$2,000,000 annually, either directly or through edits against other contractual payment obligations, including the pricing waivers authorized under subsection 3405(d) of this title; *Provided further*, That the holder of the water contract shall pass such incentives through to farmers participating in the program, less reasonable contractor costs, if any; *And provided further*, That such water may be transferred subject

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3949

to section 3405(a) of this title only if the farmer waives all rights to such incentives. This provision shall terminate by the year 2002. (106 Stat. 4714)

(23) in order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Public Law 98-541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than three hundred and forty thousand acre-feet per year for the purposes of fishery restoration, propagation, and maintenance and,

(A) by September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the United States Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery; and

(B) not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (A) of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly. If the Hoopa Valley Tribe and the Secretary do not concur, the Trinity River instream fishery releases established under this paragraph shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe. Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law. If the Secretary and the State of California determine that long-term natural fishery productivity in all Central Valley Project controlled rivers and streams resulting from implementation of this section exceeds that which existed in the absence of Central Valley Project facilities, the costs of implementing those measures which are determined to provide such enhancement shall become credits to offset reimbursable costs associated with implementation of this subsection. (106 Stat. 4714)

October 30, 1992

3950 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

EXPLANATORY NOTE

**Reference in the Text.** The Act of 2721, as amended) appears in Volume V at October 24, 1984 (Public Law 98-541, 98 Stat. page 3439.

**(c) [San Joaquin and Stanislaus Rivers.]**—The Secretary shall, by not later than September 30, 1996:

(1) develop a comprehensive plan, which is reasonable, prudent, and feasible, to address fish, wildlife, and habitat concerns on the San Joaquin River, including but not limited to the streamflow, channel, riparian habitat, and water quality improvements that would be needed to reestablish where necessary and to sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Such plan shall be developed in cooperation with the California Department of Fish and Game and in coordination with the San Joaquin River Management Program under development by the State of California; shall comply with and contain any documents required by the National Environmental Policy Act and contain findings setting forth the basis for the Secretary's decision to adopt and implement the plan as well as recommendations concerning the need for subsequent Congressional action, if any; and shall incorporate, among other relevant factors, the potential contributions of tributary streams as well as the alternatives to be investigated under paragraph (2) of this subsection. During the time that the Secretary is developing the plan provided for in this subsection, and until such time as Congress has authorized the Secretary to implement such plan, with or without modifications, the Secretary shall not, as a measure to implement this title, make releases for the restoration of flows between Gravelly Ford and the Mendota Pool and shall not thereafter make such releases as a measure to implement this title without a specific Act of Congress authorizing such releases. In lieu of such requirement, and until such time as flows of sufficient quantity, quality and timing are provided at and below Gravelly Ford to meet the anadromous fishery needs identified pursuant to such plan, if any, entities who receive water from the Friant Division of the Central Valley Project shall be assessed, in addition to all other applicable charges, a \$4 per acre-foot surcharge for all Project water delivered on or before September 30, 1997; a \$5 per acre-foot surcharge for all Project water delivered after September 30, 1997 but on or before September 30, 1999; and a \$7 per acre-foot surcharge for all Project water delivered thereafter, to be covered into the Restoration Fund. (106 Stat. 4714)

(2) in the course of preparing the Stanislaus River Basin and Calaveras River Water Use Program Environmental Impact Statement and in consultation with the State of California, affected counties, and other

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3951

interests, evaluate and determine existing and anticipated future basin needs in the Stanislaus River Basin. In the course of such evaluation, the Secretary shall investigate alternative storage, release, and delivery regimes, including but not limited to conjunctive use operations, conservation strategies, exchange arrangements, and the use of base and channel maintenance flows, in order to best satisfy both basin and out-of-basin needs consistent, on a continuing basis, with the limitations and priorities established in the Act of October 23, 1962 (76 Stat. 1173). For the purposes of this subparagraph, "basin needs" shall include water supply for agricultural, municipal and industrial uses, and maintenance and enhancement of water quality, and fish and wildlife resources within the Stanislaus River Basin as established by the Secretary's June 29, 1981 Record of Decision; and "out-of-basin" needs shall include all such needs outside of the Stanislaus River Basin, including those of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and those of the San Joaquin River under paragraph (1) of this subsection.

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Act of October 23, 1962 (Public Law 87-874, 76 Stat. 1173) referenced above appear in Volume III at page 1701. Amendments and annotations of the 1962 Act appear in Supplement I at page S338 and in Supplement II at page S889.

**(d) [Central Valley Refuges and Wildlife Habitat Areas.]**— In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the purposes of this title, the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; on the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California.

(1) Upon enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 2 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report and two-thirds of the water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. Such water shall be provided through long-term contractual agreements with appropriate parties and shall be supplemented by the increment of water provided for in paragraph (1) of this subsection; *Provided*, That the Secretary shall be obligated to provide such water

October 30, 1992

3952 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

whether or not such long-term contractual agreements are in effect. In implementing this paragraph, the Secretary shall endeavor to diversify sources of supply in order to minimize possible adverse effects upon Central Valley Project contractors.

(2) Not later than ten years after enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 4 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. The quantities of water required to supplement the quantities provided under paragraph (1) of this subsection shall be acquired by the Secretary in cooperation with the State of California and in consultation with the Central Valley Habitat Joint Venture and other interests in cumulating increments of not less than ten percent per annum through voluntary measures which include water conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such activities which do not require involuntary reallocations of project yield.

(3) All costs associated with implementation of paragraph (1) of this subsection shall be reimbursable pursuant to existing law. Incremental costs associated with implementation of paragraph (2) of this subsection shall be fully allocated in accordance with the following formula: 75 percent shall be deemed a nonreimbursable Federal expenditure; and 25 percent shall be allocated to the State of California for recovery through direct reimbursements or through equivalent in-kind contributions. (106 Stat. 4714)

(4) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under paragraph (1) of this subsection up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors. For the purpose of shortage allocation, the priority or priorities applicable to the increment of water provided under paragraph (2) of this subsection shall be the priority or priorities which applied to the water in question prior to its transfer to the purpose of providing such increment.

(5) The Secretary is authorized and directed to construct or to acquire from non-Federal entities such water conveyance facilities, conveyance capacity, and wells as are necessary to implement the requirements of this subsection; *Provided*, That such authorization shall not extend to conveyance facilities in or around the Sacramento-San Joaquin Delta Estuary. Associated construction or acquisition costs shall be reimbursable pursuant to existing

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3953

law in accordance with the cost allocations set forth in paragraph (3) of this subsection.

(6) **[Reports.]**—The Secretary, in consultation with the State of California, the Central Valley Habitat Joint Venture, and other interests, shall investigate and report on the following supplemental actions by not later than September 30, 1997:

(A) alternative means of improving the reliability and quality of water supplies currently available to privately owned wetlands in the Central Valley and the need, if any, for additional supplies; and

(B) water supply and delivery requirements necessary to permit full habitat development for water dependent wildlife on one hundred and twenty thousand acres supplemental to the existing wetland habitat acreage identified in Table 8 of the Central Valley Habitat Joint Venture's "Implementation Plan" dated April 19, 1990, as well as feasible means of meeting associated water supply requirements. (106 Stat. 4714)

(e) **[Supporting investigations.]**—Not later than five years after the date of enactment of this title, the Secretary shall investigate and provide recommendations to the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House on the feasibility, cost, and desirability of developing and implementing each of the following, including, but not limited to, the impact on the project, its users, and the State of California:

(1) measures to maintain suitable temperatures for anadromous fish survival in the Sacramento and San Joaquin rivers and their tributaries, and the Sacramento-San Joaquin Delta by controlling or relocating the discharge of irrigation return flows and sewage effluent, and by restoring riparian forests;

(2) opportunities for additional hatchery production to mitigate the impacts of water development and operations on, or enhance efforts to increase Central Valley fisheries; *Provided*, That additional hatchery production shall only be used to supplement or to re-establish natural production while avoiding adverse effects on remaining wild stocks;

(3) measures to eliminate barriers to upstream and downstream migration of salmonids in the Central Valley, including but not limited to screening programs, barrier removal programs and programs for the construction or rehabilitation of fish ladders on tributary streams;

(4) installation and operation of temperature control devices at Trinity Dam and Reservoir to assist in the Secretary's efforts to conserve cold water for fishery protection purposes;

(5) measures to provide for modified operations and new or improved control structures at the Delta Cross Channel and Georgiana Slough to assist in the successful migration of anadromous fish; and

(6) other measures which the Secretary determines would protect, restore, and enhance natural production of salmon and steelhead trout in tributary

October 30, 1992

3954 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

streams of the Sacramento and San Joaquin Rivers, including but not limited to the Merced, Mokulumne, and Calaveras Rivers and Battle, Butte, Deer, Elder, Mill, and Thomes Creeks.

**(f) Report on project fishery impacts.**—The Secretary, in consultation with the Secretary of Commerce, the State of California, appropriate Indian tribes, and other appropriate public and private entities, shall investigate and report on all effects of the Central Valley Project on anadromous fish populations and the fisheries, communities, tribes, businesses and other interests and entities that have now or in the past had significant economic, social or cultural association with those fishery resources. The Secretary shall provide such report to the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives not later than two years after the date of enactment of this title. (106 Stat. 4714)

**(g) [Ecosystem and Water System Operations Models.]**—The Secretary, in cooperation with the State of California and other relevant interests and experts, shall develop readily usable and broadly available models and supporting data to evaluate the ecologic and hydrologic effects of existing and alternative operations of public and private water facilities and systems in the Sacramento, San Joaquin, and Trinity River watersheds. The primary purpose of this effort shall be to support the Secretary's efforts in fulfilling the requirements of this title through improved scientific understanding concerning, but not limited to, the following:

- (1) a comprehensive water budget of surface and groundwater supplies, considering all sources of inflow and outflow available over extended periods;
- (2) related water quality conditions and improvement alternatives, including improved temperature prediction capabilities as they relate to storage and flows;
- (3) surface-ground and stream-wetland interactions;
- (4) measures needed to restore anadromous fisheries to optimum and sustainable levels in accordance with the restored carrying capacities of Central Valley rivers, streams, and riparian habitats;
- (5) development and use of base flows and channel maintenance flows to protect and restore natural channel and riparian habitat values;
- (6) implementation of operational regimes at State and Federal facilities to increase springtime flow releases, retain additional floodwaters, and assist in restoring both upriver and downriver riparian habitats;
- (7) measures designed to reach sustainable harvest levels of resident and anadromous fish, including development and use of systems of tradeable harvest rights;
- (8) opportunities to protect and restore wetland and upland habitats throughout the Central Valley; and

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3955

(9) measures to enhance the firm yield of existing Central Valley Project facilities, including improved management and operations, conjunctive use opportunities, development of offstream storage, levee setbacks, and riparian restoration.

All studies and investigations shall take into account and be fully consistent with the fish, wildlife, and habitat protection and restoration measures required by this title or by any other State or Federal law. Seventy-five percent of the costs associated with implementation of this subsection shall be borne by the United States as a nonreimbursable cost; the remaining 25 percent shall be borne by the State of California.

**(h) [Contracts—Intergovernmental relations.]**—The Secretary shall enter into a binding cost-share agreement with the State of California with respect to the reimbursement of costs allocated to the State in this title. Such agreement shall provide for consideration of the value of direct reimbursements, specific contributions to the Restoration Fund, and water, conveyance capacity, or other contributions in-kind that would supplement existing programs and that would, as determined by the Secretary, materially contribute to attainment of the goals and objectives of this title. (106 Stat. 4714)

**Sec. 3407. [Restoration Fund.]—(a) [Restoration Fund established.]**—There is hereby established in the Treasury of the United States the "Central Valley Project Restoration Fund" (hereafter "Restoration Fund") to be available for deposit of donations from any source and revenues provided under sections 3404(c)(3), 3405(f), 3406(c)(1), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b)(4)-(6), (10)-(18), and (20)-(22) of this title. Monies donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation.

**(b) [Authorization of appropriations.]**—Such sums as are necessary, up to \$50,000,000 per year (October 1992 price levels), are authorized to be appropriated to the Secretary to be derived from the Restoration Fund to carry out programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of this title. Any funds paid into the Restoration Fund by Central Valley Project water and power contractors and which are also used to pay for the projects and facilities set forth, in section 3406(b), shall act as an offset against any water and power contractor cost share obligations that are otherwise provided for in this title.

October 30, 1992

3956 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

**(c) [Mitigation and restoration payments by water and power beneficiaries.]—**(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual mitigation and restoration payments, in addition to the charges provided for or collected under sections 3404(c)(3), 3405(a)(1)(C), 3405(f), and 3406(c)(1) of this title, consisting of charges to direct beneficiaries of the Central Valley Project under subsection (d) of this section in order to recover a portion or all of the costs of fish, wildlife, and habitat restoration programs and projects under this title.

(2) The payment described in this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can be reasonably expected to equal the amount appropriated each year, subject to subsection (d) of this section, and in combination with all other receipts identified under this title, to carry out the purposes identified in subsection (b) of this section; *Provided*, That, if the total amount appropriated under subsection (b) of this section for the fiscal years following enactment of this title does not equal \$50,000,000 per year (October 1992 price levels) on an average annual basis, the Secretary shall impose such charges in fiscal year 1998 and in each fiscal year thereafter, subject to the limitations in subsection (d) of this section, as may be required to yield in fiscal year 1998 and in each fiscal year thereafter total collections equal to \$50,000,000 per year (October price levels) on a three-year rolling average basis for each fiscal year that follows enactment of this title. (106 Stat. 4727)

**(d) [Adjustment and assessment of mitigation and restoration payments.]—**

(1) In assessing the annual payments to carry out subsection (c) of this section, the Secretary shall, prior to each fiscal year, estimate the amount that could be collected in each fiscal year pursuant to subparagraphs 2(A) and (B) of this subsection. The Secretary shall decrease all such payments on a proportionate basis from amounts contained in the estimate so that an aggregate amount is collected pursuant to the requirements of paragraph (c)(2) of this section.

(2) The Secretary shall assess and collect the following mitigation and restoration payments, to be covered to the Restoration Fund, subject to the requirements of paragraph (1) of this subsection:

(A) The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under paragraph (c)(2) of this subsection; *Provided*, That such additional payments shall not exceed \$30,000,000 (October 1992 price levels) on a three-year rolling average basis; *Provided further*, That such additional annual payments shall be allocated so as not to exceed \$6 per acre-foot (October 1992 price levels) for agricultural water sold and delivered by

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3957

the Central Valley Project, and \$12 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project; *Provided further*, That the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years, taking into account the benefits resulting from implementation of this title; *Provided further*, That the Secretary shall impose an additional annual charge of \$25 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund; *And Provided further*, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title, the Secretary shall reduce the sums described in paragraph (c)(2) of this section to \$35,000,000 per year (October 1992 price levels) and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to \$15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in the same proportion, measured over a ten-year rolling average, as water and power users' respective allocations for repayment of the Central Valley Project. (106 Stat. 4726)

**(e) [Funding to non-Federal entities.]**—If the Secretary determines that the State of California or an agency or subdivision thereof, an Indian tribe, or a nonprofit entity concerned with restoration, protection, or enhancement of fish, wildlife, habitat, or environmental values is able to assist in implementing any action authorized by this title in an efficient, timely, and cost effective manner, the Secretary is authorized to provide funding to such entity on such terms and conditions as he deems necessary to assist in implementing the identified action.

**(f) [Restoration Fund financial reports.]**—The Secretary shall, not later than the first full fiscal year after enactment of this title, and annually thereafter, submit a detailed report to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate, and the Committee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries, and the Committee on Appropriations of the House of Representatives. Such report shall describe all receipts to and uses made of monies within the Restoration Fund and the Restoration Account during the

October 30, 1992

3958 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

prior fiscal year and shall include the Secretary's projection with respect to receipts to and uses to be made of the funds during the next upcoming fiscal year. (106 Stat. 4726)

**Sec. 3408. [Additional authorities.]—(a) [Regulations and agreements authorized.]**—The Secretary is authorized and directed to promulgate such regulations and enter into such agreements as may be necessary to implement the intent, purposes and provisions of this title.

**(b) [Use of electrical energy.]**—Electrical energy used to operate and maintain facilities developed for fish and wildlife purposes pursuant to this title, including that used for groundwater development, shall be deemed as Central Valley Project power and shall, if reimbursable, be repaid in accordance with Reclamation law at a price not higher than the lowest price paid by or charged to other Central Valley Project contractors.

**(c) [Contracts for additional storage and delivery of water.]**—The Secretary is authorized to enter into contracts pursuant to Reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private nonprofit organization for the exchange, impoundment, storage, carriage, and delivery of Central Valley Project and non-project water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose, except that nothing in this subsection shall be deemed to supersede the provisions of section 103 of Public Law 99-546 (100 Stat. 3051). (106 Stat. 4728)

**(d) [Use of project facilities for water banking.]**—The Secretary, in consultation with the State of California, is authorized to enter into agreements to allow project contracting entities to use project facilities, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carry-over storage of irrigation and other water for drought protection, multiple-benefit credit-storage operations, and other purposes. The use of such water shall be consistent with and subject to State law. All or a portion of the water provided for fish and wildlife under this title may be banked for fish and wildlife purposes in accordance with this subsection.

**(e) [Limitation on construction.]**—This title does not and shall not be interpreted to authorize construction of water storage facilities, nor shall it limit the Secretary's ability to participate in water banking or conjunctive use programs.

**(f) [Annual reports to Congress.]**—Not later than September 30 of each calendar year after the date of enactment of this title, the Secretary shall submit a detailed report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources and the Committee on Merchant Marine and Fisheries of the House of Representatives. Such report shall describe all significant actions taken by the Secretary pursuant to this title and progress toward achievement of the intent, purposes and provisions of this

October 30, 1992

CENTRAL VALLEY PROJECT IMPROVEMENT ACT 3959

title. Such report shall include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes and provisions of this title.

**(g) [Reclamation law.]**—This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof.

**(h) [Land retirement.]**—(1) The Secretary is authorized to purchase from willing sellers land and associated water rights and other property interests identified in paragraph (h)(2) which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.

(2) The Secretary is authorized to purchase, under the authority of paragraph (h)(i), and pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary

(A) would, if permanently retired from irrigation, improve water conservation by a district, or improve the quality of an irrigation district's agricultural wastewater and assist the district in implementing the provisions of a water conservation plan approved under section 210 of the Reclamation Reform Act of 1982 and agricultural wastewater management activities developed pursuant to recommendations specific to water conservation, drainage source reduction, and land retirement contained in the final report of the San Joaquin Valley Drainage Program (September, 1990); or

(B) are no longer suitable for sustained agricultural production because of permanent damage resulting from severe drainage or agricultural wastewater management problems, groundwater withdrawals, or other causes. (106 Stat. 4728)

**(i) [Water conservation.]**—(1) The Secretary is authorized to undertake, in cooperation with Central Valley Project irrigation contractors, water conservation projects or measures needed to meet the requirements of this title. The Secretary shall execute a cost-sharing agreement for any such project or measure undertaken. Under such agreement, the Secretary is authorized to pay up to 100 percent of the costs of such projects or measures. Any water saved by such projects or measures shall be governed by the conditions of subparagraph 3405(a)(1) (A) and (J) of this title, and shall be made available to the Secretary in proportion to the Secretary's contribution to the total cost of such project or measure. Such water shall be used by the Secretary to meet the Secretary's obligations under this title, including the requirements of paragraph 3406(b)(3). Such projects or measures must be implemented fully by September 30, 1999.

(2) There are authorized to be appropriated through the end of fiscal year 1998 such sums as may be necessary to carry out the provisions of this

October 30, 1992

3960 CENTRAL VALLEY PROJECT IMPROVEMENT ACT

subsection. Funds appropriated under this subsection shall be a nonreimbursable Federal expenditure.

**(j) [Project yield increase.]**—In order to minimize adverse effects, if any, upon existing Central Valley Project water contractors resulting from the water dedicated to fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary shall, not later than three years after the date of enactment of this title, develop and submit to the Congress, a least-cost plan to increase, within fifteen years after the date of enactment of this title, the yield of the Central Valley Project by the amount dedicated to fish and wildlife purposes under this title. The plan authorized by this subsection shall include, but shall not be limited to a description of how the Secretary intends to use the following options:

- (1) improvements in, modification of, or additions to the facilities and operations of the project;
- (2) conservation;
- (3) transfers;
- (4) conjunctive use;
- (5) purchase of water;
- (6) purchase and idling of agricultural land; and
- (7) direct purchase of water rights.

Such plan shall include recommendations on appropriate cost-sharing arrangements and shall be developed in a manner consistent with all applicable State and Federal law.

**(k)** Except as specifically provided in this title, nothing in this title is intended to alter the terms of any final judicial decree confirming or determining water rights. (106 Stat. 4728)

**Sec. 3409. [Environmental review.]**—Not later than three years after the date of enactment of this title, the Secretary shall prepare and complete a programmatic environmental impact statement pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing this title, including all fish, wildlife, and habitat restoration actions and the potential renewal of all existing Central Valley Project water contracts. Such statement shall consider impacts and benefits within the Sacramento, San Joaquin, and Trinity River basins, and the San Francisco Bay/Sacramento-San Joaquin River Delta Estuary. The cost of the environmental impact statement described in this section shall be treated as a capital expense in accordance with Reclamation law.

**Sec. 3410. [Authorization of appropriations.]**—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title. Funds appropriated under this title shall remain available until expended without fiscal year limitation. (106 Stat. 4730)

**Sec. 8411. [Compliance with state water law and Coordinated Operations Agreement.]**—(a) Notwithstanding any other provision of this

October 30, 1992

EQUITABLE COMPENSATION PROGRAM

3961

title, the Secretary shall, prior to the reallocation of water from any purpose of use or place of use specified within applicable Central Valley Project water rights permits and licenses to a purpose of use or place of use not specified within said permits or licenses, obtain a modification in those permits and licenses, in a manner consistent with the provisions of applicable State law, to allow such change in purpose of use or place of use.

(b) The Secretary, in the implementation of the provisions of this title, shall fully comply with the United States' obligations as set forth in the "Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated May 20, 1985, and the provisions of Public Law 99-546; and shall take no action which shifts an obligation that otherwise should be borne by the Central Valley Project to any other lawful water rights permittee or licensee.

**Sec. 3412. [Extension of the Tehama-Colusa Canal service area.]**—The first paragraph of section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended by the Act of August 19, 1967 (81 Stat. 167), and the Act of December 22, 1980 (94 Stat. 3339), authorizing the Sacramento Valley Irrigation Canals, Central Valley Project, California, is further amended by striking "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or" and inserting "Tehama, Glenn, Colusa, Solano, and Napa Counties, those portions of Yolo County within the boundaries of Colusa County Water District, Dunnigan Water District, Yolo-Zamora Water District, and Yolo County Flood Control and Water Conservation District, or". (106 Stat. 4731)

TITLE XXXV—THREE AFFILIATED TRIBES AND STANDING ROCK  
SIOUX TRIBE EQUITABLE COMPENSATION PROGRAM  
NORTH DAKOTA

**Sec. 3501. [Short title.]**—This title may be cited as the "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act".

**Sec. 3502. [Definitions.]**—As used in this title, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "Three Affiliated Tribes" means the Mandan, Hidatsa, and Arikara Tribes that reside on the Fort Berthold Indian Reservation, a Federal reservation established by treaty and agreement between the Tribes and the United States;

(3) "Standing Rock Sioux Tribe" means the members of the Great Sioux Nation that reside on the Standing Rock Indian Reservation, established by treaty between the Tribe and the United States; and

(4) "Joint Tribal Advisory Committee" means the commission established by the Secretary on May 10, 1985, for the purpose of assessing the impacts of the Garrison and Oahe Dams on the Three Affiliated Tribes and the Standing Rock Sioux Tribe. (106 Stat. 4731)

**Sec. 3503. [Findings, declarations.]—(a) [Findings.]**—In recognition of the findings, conclusions, and recommendations of the Secretary's Joint Tribal Advisory Committee, Congress finds that the Three Affiliated Tribes and the Standing Rock Sioux Tribe should be adequately compensated for the taking, in the case of the Three Affiliated Tribes, of one hundred and fifty-six thousand acres of reservation lands and, in the case of the Standing Rock Sioux Tribe, fifty-six thousand acres of reservation lands, as the site for the Garrison Dam and Reservoir, and the Oahe Dam and Reservoir. Congress concurs in the Advisory Committee's findings and conclusions that the United States Government did not justly compensate such Tribes when it acquired those lands.

**(b) [Declarations.]**—(1) The Congress declares that the Three Affiliated Tribes are entitled to additional financial compensation for the taking of one hundred and fifty-six thousand acres of their reservation lands, including thousands of acres of prime agricultural bottom lands, as the site for the Garrison Dam and Reservoir, and that such amounts should be deposited in the Recovery Fund established by section 3504(a) for use in accordance with this title.

(2) The Congress declares that the Standing Rock Sioux Tribe is entitled to additional financial compensation for the taking of over fifty-six thousand acres of its reservation lands, as the site for the Oahe Dam and Reservoir, and that such amounts should be deposited in the Standing Rock Sioux Tribe Economic Recovery Fund established by section 3504(b) for use in accordance with this title. (106 Stat. 4732)

**Sec. 3504. [Funds.]—(a) [Three Affiliated Tribes Economic Recovery Fund.]**—(1) There is established in the Treasury of the United States the "Three Affiliated Tribes Economic Recovery Fund" (hereinafter referred to as the "Recovery Fund").

(2) Commencing with fiscal year 1993, and each fiscal year thereafter, the Secretary of the Treasury shall deposit in the Three Affiliated Tribes Economic Recovery Fund an amount, which shall be nonreimbursable and nonreturnable equal to 25 percent of the receipts from deposits to the United States Treasury for the preceding fiscal year from the integrated programs of the Eastern Division of the Pick-Sloan Missouri River Basin Project administered by the Western Area Power Administration, but in no event shall the aggregate of the amounts deposited to the Fund established by this subsection for compensation for the Three Affiliated Tribes pursuant to this paragraph and paragraph (3) exceed \$149,200,000.

October 30, 1992

EQUITABLE COMPENSATION PROGRAM

3963

(3) For payment to the Three Affiliated Tribes of amounts to which they remain entitled pursuant to the Act entitled "An Act to make certain provisions in connection with the construction of the Garrison Diversion unit, Missouri River Basin Project, by the Secretary of the Interior," approved August 5, 1965 (79 Stat. 433), there is authorized to be appropriated to the Recovery Fund established by subsection (a) for fiscal year 1994 and each of the next following nine fiscal years, the sum of \$6,000,000.

(4) The Secretary of the Treasury shall deposit the interest which accrues on deposits to the Three Affiliated Tribes Economic Recovery Fund in a separate account in the Treasury of the United States. Such interest shall be available, without fiscal year limitation, for use by the Secretary of the Interior, commencing with fiscal year 1998, and each fiscal year thereafter, in making payments to the Three Affiliated Tribes for use for educational, social welfare, economic development, and other programs, subject to the approval of the Secretary. No part of the principal of the Three Affiliated Tribes Economic Development Fund shall be available for making such payments.

**(b) [Standing Rock Sioux Tribe Economic Recovery Fund.]—**

(1) There is established in the Treasury of the United States the "Standing Rock Sioux Tribe Economic Recovery Fund."

(2) Commencing with fiscal year 1993, and for each fiscal year thereafter, the Secretary of the Treasury shall deposit in the Standing Rock Sioux Tribe Economic Recovery Fund an amount, which shall be nonreimbursable and nonreturnable equal to 25 percent of the receipts from deposits to the United States Treasury for the preceding fiscal year from the integrated programs of the Eastern Division of the Pick-Sloan Missouri River Basin Project administered by the Western Area Power Administration, but in no event shall the aggregate of the amounts deposited to the Recovery Fund established by this subsection for compensation for the Standing Rock Sioux Tribe pursuant to this paragraph exceed \$90,600,000.

(3) The Secretary of the Treasury shall deposit the interest which accrues on deposits to the Standing Rock Sioux Tribe Economic Recovery Fund in a separate account in the Treasury of the United States. Such interest shall be available, without fiscal year limitation, for use by the Secretary of the Interior, commencing with fiscal year 1998, and each fiscal year thereafter, in making payments to the Standing Rock Sioux Tribe for use for educational, social welfare, economic development, and other programs, subject to the approval of the Secretary. No part of the principal of the Standing Rock Sioux Tribe Economic Recovery Fund shall be available for making such payments. (106 Stat. 4732)

**Sec. 3505. [Eligibility for other services not affected.]—**No payments pursuant to this title shall result in the reduction, or the denial, of any Federal

3964 EQUITABLE COMPENSATION PROGRAM

services or programs that the Three Affiliated Tribes or the Standing Rock Sioux Tribe, or any of their members, are otherwise entitled to, or eligible for, because of their status as a federally recognized Indian tribe or member pursuant to Federal law. No payments pursuant to this title shall be subject to Federal or State income tax, or affect Pick-Sloan Missouri River Basin power rates in any way.

**Sec. 3506. [Per capita payments prohibited.]**—No part of any moneys in any fund under this title shall be distributed to any member of the Three Affiliated Tribes or the Standing Rock Sioux Tribe on a per capita basis. (106 Stat. 4733)

**Sec. 3507. [Standing Rock Sioux Indian Reservation.]—(a) [Irrigation.]**—The Secretary of the Interior is authorized to develop irrigation within the boundaries of the Standing Rock Indian Reservation in a two thousand three hundred and eighty acre project service area, except that no appropriated funds are authorized to be expended for construction of this project unless the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (43 U.S.C. § 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Act of July 1, 1932 (25 U.S.C. § 386a).

**(b) [Specific appropriation for irrigation projects.]**—There is authorized to be appropriated, in addition to any other amounts authorized by this title, or any other law, to the Secretary of the Interior \$4,660,000 for use by the Secretary of the Interior in carrying out irrigation projects for the Standing Rock Sioux Tribe.

**(c) [Disclaimer.]**—This section shall not limit future irrigation development, in the event that such irrigation is subsequently authorized. (106 Stat. 4734)

EXPLANATORY NOTE

<p><b>Reference in the Text.</b> Extracts from the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. § 390a) appear in Volume II at page 1115. The finding of irrigability required by the 1953 Act has since been repealed by the Act of November 10, 1998, Section 901(e) of Public</p>	<p>Law 105-362 (112 Stat. 3289). Extracts from the 1998 Act appear in Volume V at page 4134.</p> <p>The Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. § 386A) commonly known as the Leavitt Act, appears in Volume I at page 504.</p>
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**Sec. 3508. [Transfer of lands.]—(a) [Former tribal lands.]**—*Subsections (a), and (c) through (j) Repealed.*

**(b) [Four Bears Area.]**—All rights, title, and interest of the United States in the following described lands (including the improvements thereon) and underlying Federal minerals are hereby declared to be held in trust by the United States for the Three Affiliated Tribes as part of the Fort Berthold Indian Reservation:

October 30, 1992

EQUITABLE COMPENSATION PROGRAM

3965

(1) approximately 142.2 acres, more or less, lying above contour elevation one thousand eight hundred and fifty-four feet mean sea level and located south of the southerly right-of-way line of North Dakota State Highway No. 23, in the following sections of Township 152 North, range 93 west of the 5th principal meridian, McKenzie County, North Dakota: section 15: south half of the southwest quarter; Section 21: northeast quarter and northwest quarter of the southeast quarter; Section 22: north half of the northwest quarter; and

(2) approximately 45.80 acres, more or less, situated in the east half of the southwest quarter and the east half of the west half of the southwest quarter of section 15, lying at or above contour elevation one thousand eight hundred and fifty-four mean sea level, located north of the northerly right-of-way line of North Dakota State Highway No. 23 and Southeasterly of the following described line: Commencing at a point on the west line of said section 15, said point being 528.00 feet Northerly of the existing northerly right-of-way line of North Dakota State Highway No. 23; thence north 77 00' 00" east to the west line of said east half of the west half of the southwest quarter of section 15, and the point of beginning of such line; thence northeasterly to the northwest corner of the east half of the southwest quarter and the point of termination. (106 Stat. 4734; § 407, Act of February 12, 1994, Public Law 103-211, 108 Stat. 41)

**Sec. 3509. [Transfer of lands at Oahe Dam and Lake Project.]***subsections (a) through (k) Repealed.*

EXPLANATORY NOTES

**Sections Repealed.** Section 407 of the Act of February 12, 1994 (Public Law 103-211, 108 Stat. 41) except for subsection (b) in section 3508, repealed sections 3508 and 3509 of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act above, effective October 30, 1994. The repealed sections read as follows:

**Sec. 3508. [Transfer of lands.]-(a) [Former tribal lands.]-**

(1) Except as provided in subsection (j), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (d).

(2) The lands referred to in paragraph (1) are those Federal lands which were acquired from the Three Affiliated Tribes by the United States for the Garrison Dam Project pursuant to the Act of October 29,

1949 and which are within the external boundary of the Fort Berthold Indian Reservation and located at or above contour elevation one thousand eight hundred and sixty feet mean sea level.

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**(c) [Former nontribal lands.]**-(1) Except as provided in subsection (b), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (d).

(2) The lands referred to in paragraph (1) are

(A) those Federal lands acquired from individual Indian owners by the United States for the Garrison Dam Project pursuant to the Act of October 29, 1949; and

EQUITABLE COMPENSATION PROGRAM

(B) those lands acquired from non-Indian owners by the United States for such Project (either by purchase or condemnation); and which are within the external boundary of the Fort Berthold Reservation, and located at or above contour elevation one thousand eight hundred and sixty feet mean sea level.

**(d) [Right of first refusal.]**—(1) The Secretary of the Interior shall, within one year following the date of the enactment of this title, offer to the Three Affiliated Tribes, and to such individual Indian owners and non-Indian owners from whom such lands were acquired, or their heirs or assigns, a right of first refusal, for a period to be determined by the Secretary of the Interior not to exceed twelve months following notice of the offer to such Tribes, owners, heirs, or assigns, to purchase at fair market value any land, in the case of the Three Affiliated Tribes, described in subsection (b), and in the case of individual Indian and non-Indian owners, described in subsection (c), which was so acquired. If any such former owner, or his or her heirs or assigns, refuses or fails to exercise his or her right to repurchase, an option to purchase such land shall be afforded to the Three Affiliated Tribes.

(2) Lands purchased from the Secretary of the Interior by former owners, or their heirs or assigns, under this subsection shall not be sold by former owners, their heirs or assigns, within the 5-year period following such purchase, unless the Three Affiliated Tribes has been afforded a right of first refusal to purchase such lands. Such right of first refusal shall afford the Tribes

(A) thirty days from such notification to inform the prospective seller whether the Tribes intend to exercise their right of first refusal to purchase such lands at the price of the bona fide offer; and

(B) one year from such notification to complete the purchase of such lands under their right of first refusal.

**(e) [Consideration.]**—In consideration for the transfer of the lands described above, the Secretary of the Interior, or his designee, shall be responsible for determining the location of

contour elevations one thousand eight hundred and sixty feet mean sea level (for subsections (a) and (c)) and one thousand eight hundred and fifty-four feet mean sea level (for subsection (b)) by surveying and monumenting such contour at intervals no greater than five-hundred feet. The survey and monumentation shall be completed within two years after the date of the enactment of this title. (106 Stat. 4735)

**(f) [Reservations.]**—The United States hereby reserves the perpetual right, power, privilege, and easement permanently to overflow, flood, submerge, saturate, percolate, and erode the land described in subsections (a), (b), and (c) in connection with the operation and maintenance of the Garrison Dam Project, as authorized by the Act of Congress approved December 22, 1944, and the continuing right to clear and remove any brush, debris, and natural obstructions which, in the opinion of the Secretary of the Army, may be detrimental to the Project. The Three Affiliated Tribes, and the owners or their heirs or assigns who reacquired such lands pursuant to this title may exercise all other rights and privileges on the land except for those rights and privileges which would interfere with or abridge the rights and easements hereby reserved.

**(g) [Structural prohibitions.]**—With respect to any lands described in this section that are below one thousand eight hundred and sixty feet mean sea level, no structures for human habitation shall be constructed or maintained on the land, and no other structures shall be constructed or maintained on the land except as may be approved in writing by the Secretary of the Army.

**(h) [Excavation and landfill restrictions.]**—With respect to lands described in subsection (a), (b), or (c), no excavation shall be conducted and no landfill placed on the land without approval by the Secretary of the Army as to the location and method of excavation or placement of landfill.

**(i) [Disclaimer.]**—Nothing in this section shall deprive any person of any right-of-way, leasehold, or other right, interest, or claim which such person may have in the lands described in subsections (a), (b), and (c) prior

October 30, 1992

EQUITABLE COMPENSATION PROGRAM

3967

to the date of the enactment of this title.

**(j) [Trust lands.]**—(1) All rights, title, and interest of the United States in the improvements and recreation facilities described in paragraph (2) are hereby declared to be held in trust by the United States for the Three Affiliated Tribes.

(2) The improvements and facilities referred to in paragraph (1) are the Red Butte Bay Public Use Area and the Deepwater Bay Public Use Area. The recreation facilities include those facilities located both above and below contour elevation 1,860 feet mean sea level.

(3) The improvements and facilities described in this subsection are transferred as is and without warranty of any kind, and the Corps of Engineers shall have no obligation or responsibility to operate, maintain, repair, or replace any of such improvements or facilities. Operation and maintenance of the improvements and recreational facilities in this subsection shall be the responsibility of the Department of the Interior. (106 Stat. 4736)

**Sec. 3509. [Transfer of Lands at Oahe Dam and Lake Project.]**—

**(a) [Former tribal lands.]**—(1) Except as provided in subsection (i), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (c).

(2) The lands referred to in paragraph (1) are those Federal lands which were acquired from the Standing Rock Sioux Tribe by the United States for the Oahe Dam Reservoir Project pursuant to the Act of September 2, 1958 (Public Law 85-915), and

(A) which extend southerly from the south shore of Cannon ball River, in Sioux County, North Dakota, to a point along the boundary between the Standing Rock and Cheyenne River Indian Reservations, in Dewey County, South Dakota; and

(B) which are located at or above contour elevation one thousand six hundred and twenty feet mean sea level.

**(b) [Former nontribal lands.]**—(1) Except as provided in subsection (i), the Secretary of the Army shall transfer administrative jurisdiction over the lands described in paragraph (2) (including the improvements thereon) to the Secretary of the Interior to be administered as set out in subsection (c).

(2) The lands referred to in graph (1) are those Federal lands acquire ed from individual Indian owners by the United States for the Oahe Dam and Reservoir Project pursuant to the Act of September 2, 1958 (Public Law 85-915), and from non-Indian owners (either by purchase or condemnation), and

(A) which extend southerly from the south shore of the Cannonball River, in Sioux County, North Dakota to a point along the boundary between the Standing Rock and Cheyenne River Indian Reservations, in Dewey County, South Dakota; and

(B) which are located at or above contour elevation one thousand six hundred and twenty feet mean sea level.

**(c) [Right of first refusal.]**—(1) The Secretary of the Interior shall, within one year following the date of the enactment of this title, offer to the Standing Rock Sioux Tribe, and to such individual Indian owners and non-Indian owners from whom such lands were acquired, or their heirs or assigns, a right of first refusal, for a period to be determined by the Secretary of the Interior not to exceed twelve months following notice of the offer to the Standing Rock Sioux Tribe, owners, heirs or assigns, to purchase at fair market value any land, in the case of the Standing Rock Sioux Tribe, described in subsection (a), and in the case of individual Indian and non-Indian owners, described in subsection (b), which was so acquired. If any such owner, or his or her heirs or assigns, refuses or fails to exercise their right to repurchase, an option to purchase such lands shall be afforded to the Standing Rock Sioux Tribe.

(2) Lands purchased from the Secretary of the Interior by such former owners, or their heirs or assigns, under this subsection shall not be sold by the former owners, their

heirs or assigns, within the five-year period following such purchase, unless the Standing Rock Sioux Tribe has been afforded a right of first refusal to purchase such lands. Such right of first refusal shall afford the Tribes—

(A) thirty days from such notification to inform the prospective seller whether the Tribe intends to exercise its right of first refusal to purchase such lands at the price of the bona fide offer, and

(B) one year from such notification to complete the purchase of such lands under its right of first refusal.

**(d) [Consideration.]**—In consideration for the transfer of the lands described above, the Secretary of the Interior, or his designee, shall be responsible for determining the location of contour elevation one thousand six hundred and twenty feet mean sea level by surveying and monumenting such contour at intervals no greater than five hundred feet. The survey and monumentation shall be completed within two years after the date of the enactment of this title. (106 Stat. 4737)

**(e) [Reservations.]**—The United States hereby reserves the perpetual right, power, privilege and easement permanently to overflow, flood, submerge, saturate, percolate and erode the land described in subsections (a) and (b) in connection with the operation and maintenance of the Oahe Dam and Lake Project, as authorized by the Act of Congress approved December 22, 1944, and the continuing right to clear and remove any brush, debris and natural obstructions which, in the opinion of the Secretary of the Army may be detrimental to the Project. The Standing Rock Sioux Tribe, and the owners or their heirs and assigns, who reacquired any such lands pursuant to this title, may exercise all other rights and privileges on the land except for those rights and privileges which would interfere with or abridge the rights and easement hereby reserved.

**(f) [Structural prohibitions.]**—With respect to lands described in this section that are below one thousand six hundred and twenty feet mean sea level, no structures for human habitation shall be constructed or maintained on the land and no other structures shall be constructed or maintained on the land except

as may be approved in writing by the Secretary of the Army.

**(g) [Excavation and landfill restrictions.]**—With respect to lands described in subsections (a) or (b), no excavation shall be conducted and no landfill placed on the land without approval by the Secretary of the Army as to the location and method of excavation or placement of landfill.

**(h) [Disclaimer.]**—Nothing in this section shall deprive any person of any right-of-way, leasehold, or other right, interest, or claim which such person may have in the lands described in subsections (a), and (b) prior to the date of the enactment of this title.

**(i) [Trust lands.]**—(1) All rights, title and interest of the United States in the improvements and recreation facilities described in paragraph (2) are hereby declared to be held in trust by the United States for the Standing Rock Sioux Tribe.

(2) The improvements and facilities referred to in paragraph (1) are the levee around the City of Fort Yates, North Dakota, and the recreation facilities located at the Fort Yates Recreation Area, the Walker Bottoms Recreation Area, and the Grand River Recreation Area, including those recreation facilities located both above and below contour elevation one thousand six hundred and twenty feet mean sea level.

(3) The improvements and facilities described in this subsection are transferred as is and without warranty of any kind, and the Corps of Engineers shall have no obligation or responsibility to operate, maintain, repair or replace any of such improvements or facilities. Operation and maintenance of the improvements and recreational facilities in this subsection shall be the responsibility of the Department of the Interior.

**(j) [Exceptions—Indian Memorial Recreation Area and Grand River Fish Spawning Station.]**—Notwithstanding subsection (i), the transfer of such improvements and facilities pursuant to subsection (i) does not include the improvements and facilities located at the Indian Memorial Recreation Area and the Grand River Fish Spawning Station, unless

October 30, 1992

SONOMA BAYLANDS WETLAND

3969

and until the State of South Dakota consents in writing and then only upon amendment of the "Agreement Between the United States and the State of South Dakota for Recreation and Fish and Wildlife Development at Lake Oahe, South Dakota" entered into on September 2, 1983, which amendment shall specifically provide for such transfer.

**(k) [Fish and wildlife.]**—Notwithstanding any other provision of law, the lands transferred under subsection (a) which, prior to the date of enactment of this title, were designated by the Corps of Engineers as mitigation lands for purposes of fish and wildlife conservation in accordance with the Fish and Wildlife Conservation Act of 1958, shall be included in any subsequent determination of the Corps' compliance with

the fish and wildlife mitigation requirements of the Fish and Wildlife Conservation Act of 1958. The Standing Rock Sioux Tribe shall use its best efforts to conduct fish and wildlife conservation and mitigation on such lands. Notwithstanding the provisions of the Fish and Wildlife Conservation Act of 1958, the State of South Dakota shall have no claim, right, or cause of action pursuant to Federal law to compel designation of additional lands currently under the jurisdiction of the Corps of Engineers, for purposes of fish and wildlife conservation in lieu of the lands transferred by subsection (a). (106 Stat. 4736). Extracts from the 1994 Act appear in Volume V at page 4008.

**Sec. 3510.[Conforming amendment.]**—Section 10(a)(2) of Public Law 89-108 (79 Stat. 433) is amended by striking "\$67,910,000" and inserting "\$7,910,000."

EXPLANATORY NOTE

**Reference in the Text.** The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) appears in its original form in Volume III at page 1841. Notes of opinion appear in Supplement I on pages S401 and S402. The

1965 Act as amended by the Act of May 12, 1986 (Public Law 99-294, 100 Stat. 418) and section 3510 above appears in Supplement II at page S933. The 1986 Act appears in Volume V at page 3464.

**Sec. 3511.[ Authorization.]**—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 3504 of this title. (106 Stat. 4739)

TITLE XXXVI—SONOMA BAYLANDS WETLAND  
DEMONSTRATION PROJECT, CALIFORNIA

**Sec. 3601. [Sonoma Baylands Wetland Demonstration Project.]—(a) [In general.]**—The Secretary of the Army is directed to develop and carry out in accordance with this section a three hundred and twenty-acre Sonoma Baylands wetland demonstration project in the San Francisco Bay-Delta estuary, California. The project shall utilize dredged material suitable for aquatic disposal to restore, protect, and expand the Sonoma Baylands for the

purposes of preserving waterfowl, fish, and other wetland dependent species of plants and animals and to provide flood control, water quality improvement, and sedimentation control.

**(b) [Additional project purposes.]**—In addition to the purposes described in subsection (a), the purposes of the project under this section are to restore tidal wetlands, provide habitat for endangered species, expand the feeding and nesting areas for waterfowl along the Pacific flyway, and demonstrate the use of suitable dredged material as a resource, facilitating the completion of Bay Area dredging projects in an environmentally sound manner.

**(c) [Plan.]—(1) [General requirement.]**—The Secretary, in cooperation with appropriate Federal and State agencies, and in accordance with applicable Federal and State environmental laws, shall develop in accordance with this subsection a plan for implementation of the Sonoma Baylands project under this section.

**(2) [Contents.]**—The plan shall include initial design and engineering, construction, general implementation and site monitoring.

**(3) [Target dates.]—(A) [First phase.]**—The first phase of the plan for final design and engineering shall be completed within six months of the date of the enactment of this Act.

**(B) [Second phase.]**—The second phase of the plan, including the construction of on-site improvements, shall be completed within ten months of the date of the enactment of this Act.

**(C) [Third phase.]**—The third phase of the plan, including dredging, transportation, and placement of material, shall be started no later than July 1, 1994.

**(D) [Fourth phase.]**—The final phase of the plan shall include monitoring of project success and function and remediation if necessary.

**(d) [Non-Federal participation.]**—Any work undertaken pursuant to this title shall be initiated only after non-Federal interests have entered into a cooperative agreement according to the provisions of section 221 of the Flood Control Act of 1970. The non-Federal interests shall agree to:

(1) provide 25 percent of the cost associated with the project, including provision of all lands, easements, rights-of-way, and necessary relocations; and

(2) pay 100 percent of the cost of operation, maintenance, replacement, and rehabilitation costs associated with the project.

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the River and Harbor and Flood Control Acts of 1970, Act of December 31, 1970 (Public Law 91-611, 84 Stat. 1818) referenced above appear in Volume IV at page 2614. However, section 221 does not appear herein.

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3971

**(e) [Reports to Congress.]**—The Secretary shall report to Congress at the end of each of the time periods referred to in subsection (c)(3) on the progress being made toward development and implementation of the project under this section.

**(f) [Authorization of appropriations.]**—There is authorized to be appropriated \$15,000,000 for carrying out this section for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended. (106 Stat. 4739)

TITLE XXXVII—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT, ARIZONA

**Sec. 3701. [Short title.]**—This title may be cited as the "San Carlos Apache Tribe Water Rights Settlement Act of 1992".

**Sec. 3702. [Congressional findings.]—(a) [Specific findings.]**—The Congress finds and declares that—(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self sufficiency depend on the development of viable Indian reservation economies;

(3) qualification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on November 9, 1871, and by actions subsequent thereto, the United States Government established a reservation for the San Carlos Apache Tribe in Arizona;

(5) the United States, as trustee for the San Carlos Apache Tribe, obtained water entitlements for the Tribe pursuant to the Globe Equity Decree of 1935; however, continued uncertainty as to the full extent of the Tribe's entitlement to water has severely limited the Tribe's access to water and financial resources necessary to develop its valuable agricultural lands and frustrated its efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and self-sufficiency;

(6) proceedings to determine the full extent and nature of the Tribe's water rights are currently pending before the United States District Court in Arizona and in the Superior Court of the State of Arizona in and for Maricopa County, as part of the General Adjudication of the Gila River System and Source;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and

socially damaging limits to the Tribe's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Tribe and its neighboring non-Indian communities have sought to settle their dispute to water and reduce the burdens of litigation;

(8) after lengthy negotiations, which included participation by representatives of the United States Government, the Tribe, and neighboring non-Indian communities of the Salt River and Gila River Valleys, who are all party to the General Adjudication of the Gila River System and Source, the parties are prepared to enter into an Agreement to resolve all water rights claims between and among themselves, to quantify the Tribes entitlement to water, and to provide for the orderly development of the Tribe's lands;

(9) pursuant to the Agreement, the neighboring non-Indian communities will relinquish claims to approximately fifty-eight thousand seven hundred and thirty-five acre-feet of surface water to the Tribe, provide the means of storing water supplies of the Tribe behind Coolidge Dam on the Gila River in Arizona to enhance fishing, recreation, and other environmental benefits, and make substantial additional contributions to carry out the Agreement's provisions; and

(10) to advance the goal of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Tribe to utilize fully its water resources in developing a diverse, efficient reservation economy.

**(b) [Purposes of title.]**—It is the purpose of this title—

(1) to approve, ratify, and confirm the Agreement to be entered into by the Tribe and its neighboring non-Indian communities,

(2) to authorize and direct the Secretary of the Interior to execute and perform such Agreement, and

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Tribe as provided in the Agreement and this title. (106 Stat. 4741)

**Sec. 3703. [Definitions.]**—For purposes of this title:

(1) "Active conservation capacity" means that storage space, exclusive of bank storage, available to store water which can be released through existing reservoir outlet works.

(2) "Agreement" means that agreement among the San Carlos Apache Tribe; the United States of America; the State of Arizona; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Arizona cities of Chandler, Glendale, Globe, Mesa, Safford, Scottsdale and

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3973

Tempe, the town of Gilbert; Buckeye Water Conservation and Drainage District, Buckeye Irrigation Company, the Phelps Dodge Corporation and the Central Arizona Water Conservation District, together with all exhibits thereto, as the same is executed by the Secretary of the Interior pursuant to sections 3710(c) and 3711(a)(7) of this title.

(3) "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1521 et seq.).

(4) "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(5) "Globe Equity Decree" means the decree dated June 29, 1935, entered in the United States of America v. Gila Valley Irrigation District, et al., Globe Equity 59, in the District Court of the United States in and for the District of Arizona, and all decrees and decisions supplemental thereto.

(6) "Reservation" means the reservation authorized by the Treaty with the Apache Nation dated July 1, 1852 (10 Stat. 979), established by the Executive orders of November 9, 1871 and December 14, 1872, as modified by subsequent Executive orders and Acts of Congress including the Executive order of August 5, 1873.

(7) "RWCD" means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(8) "Secretary" means the Secretary of the Interior.

(9) "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona Corporation.

(10) "SCIP" means the San Carlos Irrigation Project authorized pursuant to the Act of June 7, 1924 (42 Stat. § 475), expanded pursuant to the Act of March 7, 1928 (45 Stat. 200, 210), and administered by the Bureau of Indian Affairs.

(11) "Tribe" means the San Carlos Apache Tribe, a tribe of Apache Indians organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476), and duly recognized by the Secretary. (106 Stat. 4742)

EXPLANATORY NOTE

**References in the Text.** The Colorado River Basin Project Act of 1968, Act of September 30, 1968, Public Law 90-537 (82 Stat. 885) appears in Volume IV at page 2395. The Act of June 7, 1924 (42 Stat. 475) referenced above does not appear herein.

Extracts of the Act of March 7, 1928 (45

Stat. 200) appear in Volume I at page 405. However, provisions regarding the San Carlos Irrigation Project do not appear among the extracts.

The Indian Reorganization Act, Act of June 18, 1934 (48 Stat. 987) does not appear herein.

October 30, 1992

3974

SAN CARLOS APACHE SETTLEMENT

**Sec. 3704. [Water.]—(a) [Reallocation of water.]**—The Secretary shall reallocate, for the exclusive use of the Tribe, all of the water referred to in subsection (f)(2) of section 2 of the Act of October 19, 1984 (98 Stat. 2698), which is not required for delivery to the Ak-Chin Indian Reservation under that Act. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

EXPLANATORY NOTE

**Reference in the Text.** The Act of 2698) referenced above appears in Volume V October 19, 1984 (Public Law 98-530, 98 Stat. at page 3431.

**(b) [Partial satisfaction of claims.]**—Notwithstanding any other provision of this title, in the event the authorizations contained in section 3708(b) do not become effective, the water referred to in subsection 3704(a) of this title shall constitute partial satisfaction of the Tribe's claims for water in the proceeding entitled "In Re the General Adjudication of All Rights To Use Water in the Gila River System and Source", Maricopa County Superior Court Nos. W-091, W-092, W-093, and W-094 (consolidated), as against the parties identified in section 3703(2) of this title.

**(c) [Additional allocations.]**—The Secretary shall reallocate to the Tribe an annual entitlement to fourteen thousand six hundred and fifty-five acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Phelps Dodge Corporation in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12446 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 3706, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable.

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3975

**(d)[ Additional allocations.]**—The Secretary shall reallocate to the Tribe an annual entitlement to three thousand four hundred and eighty acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to the city of Globe, Arizona, in the Notice of Final Water Allocations to Indian and Non-Indian Water Users and Related Decisions, dated March 24, 1983 (48 F.R. 12466 et seq.). The Tribe shall pay the United States or, if directed by the Secretary, CAWCD, all operation, maintenance and replacement costs associated with such CAP water. Except as provided in subsection (e)(3) of section 3706, water service capital charges, or any other charges or payments for such CAP water other than operation, maintenance and replacement costs shall be nonreimbursable. The Secretary shall exclude, for the purposes of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract No. 14-0906-09W-09245, Amendment No. 1, between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with such water from CAWCD's repayment obligation and such costs shall be nonreimbursable. (106 Stat. 4742; 108 Stat. 708)

EXPLANATORY NOTE

**1994 Amendment.** Section 2(a) of the Act of May 31, 1994 (Public Law 103-263, 108 Stat. 708) amended subsection 3704(d) by deleting "reimbursable" and inserting in lieu thereof "nonreimbursable". Section 2(b) provided that the amendment made by subsection 2(a) shall be considered to have taken effect on October 30, 1992. Section 2 of the 1994 Act appears in Volume V at page 4010.

**(e) [Water storage pool.]**—Notwithstanding the Act of June 7, 1924 (43 Stat. 475), as amended by the Act of March 7, 1928 (45 Stat. 200, 210), in order to permit the Tribe to maintain permanently a pool of stored water for fish, wildlife, recreation and other purposes, the Secretary shall designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam on the Gila River in Arizona as is not being used by the Secretary to meet the obligations of SCIP for irrigation storage, except that any water stored by the Tribe shall be the first water to spill ("spill water") from Coolidge Dam. The water stored by the Tribe shall be, at the Tribe's designation, the water provided to the Tribe pursuant to subsections (a), (c) and (d) of this section, its entitlement of twelve thousand and seven hundred acre-feet of water under its Tribal CAP Delivery Contract dated December 11, 1981; the water referred to in section 3710(f), or any combination thereof. A pro rata share of evaporation and seepage losses shall be deducted daily from the Tribe's stored water balance as provided in the Agreement. The Tribe shall pay an equitable share of the operation and maintenance costs for the water stored for the benefit of the Tribe, subject to the Act of July 1, 1932 (47 Stat.

October 30, 1992

3976

SAN CARLOS APACHE SETTLEMENT

564, 25 U.S.C. § 386 et seq.). The water stored by the Tribe pursuant to this subsection shall not be subject to apportionments pursuant to Article VIII (2) of the Globe Equity Decree. Not later than January 31 of each year, the Secretary shall notify the United States District Court for the District of Arizona of the Tribe's stored water balance as of January 1 of that year. The Secretary shall notify said Court of the Tribe's stored water balance at least once per calendar month and at such more frequent intervals as conditions, in the Secretary's judgment, may require. (106 Stat. 4742)

EXPLANATORY NOTE

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

**(f) [Execution of agreement.]**—The Secretary shall execute the Agreement which establishes, as between and among the parties to Agreement, the Tribe's permanent right, except as provided in paragraphs 13.0, 14.0 and 15.0 of the Agreement, to the on reservation diversion and use of all ground water beneath the Tribe's Reservation, subject to the management plan referred to in section 3710(d) of this title, and all surface water in all tributaries within the Tribe's Reservation to the mainstreams of: the Black River, the Salt River below its confluence with the Black River, the San Pedro River and the Gila River, including the right, except as provided in paragraphs 14.0 and 15.0 of the Agreement, to fully regulate and store such water on the tributaries. The Tribe's rights to the mainstream of Black River, San Pedro River and the Gila River shall be as provided in the Agreement and the Globe Equity Decree. With respect to parties not subject to the waiver authorized by subsection 3708(b) of this title, the claims of the Tribe and the United States, as trustee for the Tribe, are preserved.

**(g) [Gila river exchanges.]**—Any exchange pursuant to this legislation of Gila River water for water supplied by the CAP shall not amend, alter or conflict with the changes authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. § 1524(f)). (106 Stat. 4742)

**Sec. 3705. [Ratification and confirmation of contracts.]—(a) [Ratification of contract.]**—Except as provided in section 3710(i), the contract between the SRP and RWCD District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement, is ratified, confirmed, and declared to be valid.

**(b) [RWCD Subcontract.]**—The Secretary shall revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "A" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3977

addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

**(c) [Restrictions.]**—The lands within RWCD and SRP shall be free from the ownership and full cost pricing limitations of Federal reclamation law and from all full cost pricing provisions of Federal law.

**(d) [Disclaimer.]**—No person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. § 390aa et seq.) or any full cost pricing provision of Federal law by virtue of their participation in the settlement or their execution and performance of the Agreement, or the use, storage or delivery of CAP water pursuant to a lease, sublease or exchange of water to which the Tribe is entitled under this title. (106 Stat. 4744)

EXPLANATORY NOTE

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

**(e) [Full cost pricing provisions.]**—The lands within the Tribe's Reservation shall be free from all full cost pricing provisions of Federal law.

**(f) [Certain extensions authorized.]**—Notwithstanding any other provision of law or any other provision of this title, the Secretary, subject to tribal approval, is authorized and directed to: extend the term of that right-of-way permit granted to Phelps Dodge Corporation on March 8, 1950, and all amendments thereto, for the construction, operation and maintenance of an electrical transmission line and existing road for access to those facilities over the lands of the Tribe; extend the term of that right-of-way permit numbered 2000089 granted on July 25, 1944, to Phelps Dodge Corporation, and all amendments thereto, for the construction, use, operation and maintenance of a water plant, pipeline, canal, water flowage easement through Willow Creek and existing road for access to those facilities over the lands of the Tribe; and grant a water flowage easement through the portions of Eagle Creek flowing through the Tribe's Reservation. Notwithstanding any other provision of law, each such right-of-way and flowage easement shall be for a term expiring on March 8, 2090, and shall be subject to the right of Phelps Dodge to renew the rights-of-way and flowage easements for an additional term of up to one hundred years, subject to payment of rental at a rate based upon fair market retail value. (106 Stat. 4744)

**Sec. 3706. [Water delivery contract amendments; water lease, water withdrawal.]**—**(a) [Amendment of CAP water delivery contract.]**—The Secretary shall amend the CAP water delivery contract between the United States and the Ak-Chin Indian Community dated December 11, 1980, and the

October 30, 1992

3978

SAN CARLOS APACHE SETTLEMENT

contract between the United States and the Ak-Chin Indian Community dated October 2, 1985, as is necessary to satisfy the requirements of section 3704(a) of this title.

**(b) [CAP water delivery contract amendment.]**—The Secretary shall amend the CAP water delivery contract between the United States and the Tribe dated December 11, 1980 (hereinafter referred to as the "Tribal CAP Delivery Contract"), as follows:

(1) To include the obligation by the United States to deliver water to the Tribe upon the same terms and conditions set forth in the Tribal CAP Delivery Contract as follows: water from those sources described in subsections (a), (c), and (d) of section 3704 of this title; except that the water reallocated pursuant to such subsections shall retain the priority such water had prior to its reallocation. The cost to the United States to meet the Secretary's obligation to design and construct new facilities to deliver CAP water shall not exceed the cost of construction of the delivery and distribution system for the twelve thousand and seven hundred acre-feet of CAP water originally allocated to the Tribe.

(2) To extend the term of such contract to December 31, 2100, and to provide for its subsequent renewal upon the same terms and conditions as the Tribal CAP Delivery Contract, as amended.

(3) To authorize the Tribe to lease or to enter into an option or options to lease the water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, within Maricopa, Pinal and Pima Counties for terms not exceeding one hundred years and to renew such leases.

(4) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, to the city of Scottsdale under the terms and conditions of the Water Lease set forth in Exhibit "B" to the Agreement. (106 Stat. 4745)

(5) To authorize the Tribe to lease water to which the Tribe is entitled under the Tribal CAP Delivery Contract, as amended, including, but not limited to, the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the town of Gilbert.

**(c) [Approval of amendments.]**—Notwithstanding any other provision of law, the amendments to the Tribal CAP Delivery Contract set forth in Exhibit "C" to the Agreement are hereby authorized, approved and confirmed.

**(d) [Charges not to be imposed.]**—The United States shall not impose upon the Tribe the operation, maintenance and replacement charges described and set forth in section 6 of the Tribal CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the lessee or lessees of the options to lease or leases herein authorized.

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3979

**(e) [Water lease.]**—Except as provided in paragraph (3) of this subsection, any Water Lease entered into by the Tribe as authorized by section 3706 shall specifically provide that—

(1) the lessee shall pay all operation, maintenance and replacement costs of such water to the United States, or if directed by the Secretary, to CAWCD;

(2) except as provided in paragraph (3) of this subsection, the lessee shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance and replacement costs and lease payments; and

(3) with respect to the water reallocated to the Tribe pursuant to subsections (c) and (d) of section 3704, the Tribe or lessee shall pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of this title through September 30, 1995.

**(f) [Allocation and repayment of costs.]**—For the purpose of determining allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-0906-09W-09245, Amendment No. 1, between the United States of America and CAWCD dated December 1, 1988, and any amendment or revision thereof, the costs associated with the delivery of water to which the Tribe is entitled under the Tribal Delivery Contract, as amended, to the lessee or lessees of the options to lease or leases herein authorized shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

**(g) [Agreements.]**—The Secretary shall, in consultation with the Tribe, enter into agreements necessary to permit the Tribe to exchange, within the State of Arizona, all or part of the water available to it under its Tribal CAP Delivery Contract, as amended.

**(h) [Ratification.]**—As among the parties to the Agreement, the right of the city of Globe to withdraw and use water from under the Cutter subarea under the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed. (106 Stat. 4745)

**(i) [Use of water.]**—As among the parties to the Agreement, the right of the city of Safford to withdraw and use water from the Bonita Creek watershed as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

**(j) [Withdrawal and use of water.]**—As between the Tribe and Phelps Dodge, the right of Phelps Dodge to divert, withdraw and use water as provided in the Agreement, as limited and conditioned thereunder, is hereby ratified and confirmed.

**(k) [Prohibitions.]**—Except as authorized by this section, no water made available to the Tribe pursuant to the Agreement, the Globe Equity Decree, or

October 30, 1992

3980

SAN CARLOS APACHE SETTLEMENT

this title may be sold, leased, transferred or in any way used off the Tribe's Reservation. (106 Stat. 4745)

**Sec. 3707. [Construction and Rehabilitation, Trust Fund.]—**

**(a) [Duties.]—**

(1) The Secretary is directed, pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. § 1501 et. seq.), to design and construct new facilities for the delivery of 12,700 acre-feet of CAP water originally allocated to the Tribe to tribal reservation lands at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this title;

(2) The Secretary of Commerce is directed to amend the contract between the United States Economic Development Administration and the Tribe relating to the construction of Elgo Dam on the San Carlos Apache Indian Reservation, Project No. 07-0981-09000210, to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this title are discharged.

**(b) [Fund.]—**There is established in the Treasury of the United States a fund to be known as the "San Carlos Apache Tribe Development Trust Fund" (hereinafter called the "Fund") for the exclusive use and benefit of the Tribe. The Secretary shall deposit into the Fund the funds authorized to be appropriated in subsection (c) and the \$3,000,000 provided by the State of Arizona pursuant to the Agreement. There shall be deposited into the Fund any monies paid to the Tribe or to the Secretary on behalf of the Tribe from leases or options to lease water authorized by section 3706 of this title. Such sums shall be invested in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. § 162(a)). (106 Stat. 4747)

**(c) [Authorization.]—**There are authorized to be appropriated \$38,400,000 in fiscal year 1994, together with interest accruing thereon beginning one year from the date of enactment of this title at rates determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to carry out the provisions of subsection (b).

**(d) [Use of fund.]—**When the authorizations contained in section 3708(b) of this title are effective, the principal of the Fund and any interest or income accruing thereon may be used by the Tribe to put to beneficial use the Tribe's water entitlement, to defray the cost to the Tribe of CAP operation, maintenance and replacement charges as appropriate, and for other economic and community development purposes. The income from the Fund shall be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council. Such income may thereafter be expended only in

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3981

accordance with such budget. Income not distributed shall be added to principal. The principal from the Fund may be distributed by the Secretary to the San Carlos Apache Tribe only upon presentation to the Secretary of a certified copy of a duly enacted Resolution of the Tribal Council requesting distribution and a written budget approved by the Tribal Council and the Secretary. Such principal may thereafter be expended only in accordance with such budget: *Provided, however,* That the principal may only be utilized for long-term economic development projects. In approving a budget for the distribution of income or principal, the Secretary shall, in accordance with regulations promulgated pursuant to subsection (e) of this section, be assured that methods exist and will be employed to ensure that use of the funds shall be in accordance with the approved budget.

**(e) [Regulations.]**—The Secretary shall, no later than thirty days after the date the authorizations contained in section 3708(b) are effective, promulgate regulations necessary to carry out the purposes of subsection (d).

**(f) [Disclaimer.]**—The United States shall not be liable for any claim or cause of action arising from the Tribe's use or expenditure of moneys distributed from the Fund. (106 Stat. 4747)

**Sec. 3708. [Satisfaction of claims.]—(a) [Full satisfaction of claims.]**—Except as provided in subsection (e) of this section, the benefits realized by the Tribe and its members under this title shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights under Federal, State, and other laws (including claims for water rights in ground water, surface water, and effluent) from time immemorial to the effective date of this title. Notwithstanding the foregoing, nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's Reservation.

**(b) [Release.]**—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized, as part of the performance of the obligations under the Agreement, to execute a waiver and release, except as provided in the Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from time immemorial to the effective date of this title, and any and all future claims of water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States, the State of Arizona or otherwise. (106 Stat. 4748)

**(c) [Additional releases.]**—Except as provided in the Agreement, the United States shall not assert any claim against the State of Arizona or any political subdivision thereof, or any person, corporation or municipal

October 30, 1992

3982

SAN CARLOS APACHE SETTLEMENT

corporation, arising under the laws of the United States, the State of Arizona or otherwise in its own right or on behalf of the Tribe based upon—

(1) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) of the Tribe and its members, or—

(2) water rights or injuries to water rights (including water rights in ground water, surface water and effluent) held by the United States on behalf of the Tribe and its members.

**(d) [Savings provision.]**—In the event the authorizations contained in subsection (b) of this section do not become effective pursuant to section 3711(a), the Tribe and the United States shall retain the right to assert past and future water rights claims as to all Reservation lands.

**(e) [Disclaimer.]**—Nothing in this title shall affect the water right or claims related to the San Carlos Apache Allotments outside the exterior boundaries of the Reservation.

**(f) [Claims.]**—(1) The United States District Court for the District of Arizona and the United States Claims Court are authorized to hear and decide any claim brought by the Central Arizona Water Conservation District or other contractors of CAP water. Any such claim shall be filed within two years of the date of enactment of this Act, and shall be heard by the court on an expedited basis. If such a claim is filed and the court grants judgment for the plaintiff(s), the court shall award such relief as it deems proper, and shall award costs and attorneys' fees to the plaintiff(s). Any judgment of the court shall be subject to appeal on the same basis that other judgments of that court are subject to review under existing law.

(2) For purposes of this subsection, "claim" means a claim that the reallocation of water to the Tribe pursuant to section 3704(a) of this Act has unlawfully deprived the Central Arizona Water Conservation District or other contractors of CAP water of legal rights to such water. (106 Stat.4748)

**Sec. 3709. [Environmental compliance.]—(a) [No major Federal action.]**—Execution of the settlement agreement by the Secretary as provided for in section 3710(c) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. § 4321 et seq.). The Secretary shall carry out all necessary environmental compliance during the implementation phase of this settlement.

EXPLANATORY NOTE

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

**(b) [Authorizations.]**—There are authorized to be appropriated such sum as may be necessary to carry out all necessary environmental compliance

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3983

associated with the settlement under this title, including mitigation measures adopted by the Secretary.

**(c) [Lead agency.]**—With respect to such settlement, the Bureau of Reclamation shall be designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable Federal environmental laws.

**(d) [Environmental acts.]**—The Secretary shall comply with all aspects of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and the Endangered Species Act (16 U.S.C. § 1531 et seq.), and other applicable Federal environmental Acts and regulations in proceeding through the implementation phase of such settlement. (106 Stat. 4749)

EXPLANATORY NOTE

**Reference in the Text.** The Endangered Species Act of 1973, Act of December 28, 1973 (Public Law 93-205, 87 Stat. 884) referenced above appears in Volume IV at page 2782.

**Sec. 3710. [Miscellaneous provisions.]—(a) [Waiver of sovereign immunity.]**—In the event any party to the Agreement files a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of this title or the Agreement, naming the United States of America or the Tribe as parties, authorization is hereby granted to joining the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived.

**(b) [Certain claims prohibited.]**—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this title or the Agreement against any lands within the San Carlos Apache Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

**(c) [Approval of agreement.]**—Except to the extent that the Agreement conflicts with the provisions of this title, such Agreement is hereby approved, ratified and confirmed. The Secretary shall execute and perform such Agreement as approved, ratified and confirmed. The Secretary is authorized to execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

**(d) [Ground water management plan.]**—The Secretary shall establish a ground water management plan for the San Carlos Apache Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as a management plan developed under Arizona law.

October 30, 1992

3984

SAN CARLOS APACHE SETTLEMENT

**(e) [Amendment to the Act of April 4, 1938.]**—The Act of April 4, 1938 (52 Stat. 193; 25 U.S.C. § 390), is amended by inserting immediately before the period at the end thereof a colon and the following: "*Provided further*, That concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the governing body of the San Carlos Apache Tribe upon such conditions and subject to such limitations as may be set forth in the constitution and bylaws of such Tribe".

EXPLANATORY NOTE

**Reference in the Text.** The Act of April 4, 1938 (52 Stat. 193) referenced above does not appear herein.

**(f) [San Carlos Reservoir.]**—There is hereby transferred to the Tribe the Secretary's entitlement of 30,000 acre-feet of water, less any evaporation and seepage losses from the date of acquisition by the Secretary to the date of transfer, which the Secretary may have acquired through substituting CAP water for water to which the Gila River Indian Community and the San Carlos Irrigation and Drainage District had a right to be released from San Carlos Reservoir and delivered to them in 1990.

**(g) [Limitation.]**—No part of the Fund established by section 3707(b) of this title, including principal and income, or income from options to lease water or water leases authorized by section 3706, may be used to make per capita payments to members of the Tribe.

**(h) [Disclaimer.]**—Nothing in this title shall be construed to repeal, modify, amend, change or affect the Secretary's obligations to the Ak-Chin Indian Community pursuant to the Act of October 19, 1984 (98 Stat. 2698).

**(i) [Water rights.]**—Nothing in this title shall be construed to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona tribe, band or community, other than the San Carlos Apache Tribe.

**(j) [Planet ranch.]**—The Secretary is authorized and directed to acquire with the consent of and upon terms mutually acceptable to the of Scottsdale ("city") and the Secretary, all of the city's right, title and interest in Planet Ranch located on the Bill Williams River in Arizona, including all water rights appurtenant to that property, and the city's January 1988 application filed with the Arizona Department of Water Resources to appropriate water from the Bill Williams River through a land exchange based on fair market value. If an exchange is made with land purchased by the Bureau of Reclamation for the construction and operation of the Central Arizona Project, then, upon commencement of repayment by CAWCD of the reimbursable costs of the Central Arizona Project, the fair market value of those lands so exchanged shall be credited in full against the annual payments due from CAWCD under Article 9.4(a) of Contract No. 14-0906-09W-09245, Amendment No. 1,

October 30, 1992

SAN CARLOS APACHE SETTLEMENT

3985

between the United States and CAWCD dated December 1, 1988, and any amendment or revision thereof, until exhausted: *Provided, however,* That the authorized appropriation ceiling of the Central Arizona Project shall not be affected in any manner by the provisions of this subsection. (106 Stat. 4750)

**(k) [Repeal.]**—Section 304(c)(3) of the Colorado River Basin Project Act (43 U.S.C. § 1524(c)(3)) is hereby repealed. This subsection does not authorize transportation of water pumped within the exterior boundary of a Federal reclamation project established prior to September 30, 1968, pursuant to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. § 391), as amended and supplemented, across project boundaries. (43 U.S.C. § 1524.)

EXPLANATORY NOTE

**Reference in the Text.** The Colorado River Basin Project Act, Act of September 30, 1968 (Public Law 90-537, 82 Stat. 885) referenced above appears in Volume IV at page 2395. Annotations and amendments to the 1968 Act appear in Supplement II at page S995.

**(l) [Water rights.]**—Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal agency other than the Bureau of Indian Affairs on behalf of the San Carlos Apache Tribe, nor shall anything in this title be construed to prohibit the United States from confirming in the Agreement, except on behalf of Indian tribes other than the San Carlos Apache Tribe, the Gila River and Little Colorado River watershed water rights of other parties to the Agreement by making express provisions for the same in the Agreement. (106 Stat. 4751; 25 U.S.C. § 390.)

**Sec. 3711. [Effective date.]—(a) [Effective date of authorization.]**— The authorization contained in section 3708(b) of this title shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

- (1) the Secretary has fulfilled the requirements of sections 3704 and 3706;
- (2) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 3705(b);
- (3) the funds authorized by section 3707(c) have been appropriated and deposited into the Fund;
- (4) the contract referred to in section 3707(a)(2) has been amended;
- (5) the State of Arizona has appropriated and deposited into the Fund \$3,000,000 as required by the Agreement;
- (6) the stipulations attached to the Agreement as Exhibits "D" and "E" have been approved; and
- (7) the Agreement has been modified, to the extent it is in conflict with this title, and has been executed by the Secretary.

October 30, 1992

3986 RECLAMATION PROJECTS AND AUTHORIZATION ACT

**(b) [Conditions.]**—(1) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), and (7) of subsection (a) of this section have not occurred by December 31, 1994, subsections (c) and (d) of section 3704, subsections (a) and (b) of section 3705, section 3706, subsections (a)(2), (c), (d), and (f) of section 3707, subsections (b) and (c) of section 3708, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 3710 of this title, together with any contracts entered into pursuant to any such section or subsection, shall not be effective on and after the date of enactment of this title, and any funds appropriated pursuant to section 3707(c), and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the Treasury, as general revenues, and any funds appropriated by the State of Arizona pursuant to the Agreement, and remaining unobligated and unexpended on the date of the enactment of this title, shall immediately revert to the State of Arizona.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, if the provisions of subsections (a) and (b) of section 3705 of this title have been otherwise accomplished pursuant to provisions of the Act of October 20, 1988, the provisions of paragraph (1) of this subsection shall not be construed as affecting such subsections. (106 Stat. 4751)

TITLE XXXVIII—SAN FRANCISCO WATER RECLAMATION  
AND REUSE DEMONSTRATION PROJECT

**[Demonstration project authorized.]**—The Secretary of the Interior is authorized and directed to undertake a demonstration project in the City and County of San Francisco to examine the feasibility and effectiveness of using advanced ecologically engineered technology for water reclamation and reuse in accordance with the title 22 standards of the California Water Code. "Advanced Ecologically Engineered Technology" refers to a greenhouse-based, ecologically engineered technology which employs highly populated pond and marsh ecosystems to produce water for reclamation and reuse. (106 Stat. 4752)

**[Federal cost share.]**—One-half of the costs associated with implementation of this title shall be borne by the United States as a nonreimbursable cost; the other one-half shall be borne by the State of California and the City and County of San Francisco.

TITLE XXXIX—SIPHON REPAIR AND REPLACEMENT

**(a) [CAP siphon replacement.]**—Congress finds that the prestressed concrete pipe siphons installed in the Hayden-Rhodes Aqueduct portion of the Central Arizona Project designed and constructed by the Secretary pursuant to the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) have been

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3987

determined to be defective, inadequate and unsuitable for aqueduct purposes and must be replaced or substantial repairs completed for the transfer of the operation of the Project to its local sponsors.

EXPLANATORY NOTE

**Reference in the Text.** The Colorado page 2395. Amendments and annotations to River Basin Project Act, Act of September 30, the 1968 Act appear in Supplement II at page 1968 (Public Law 90-537, 82 Stat. 885) S995. referenced above appears in Volume IV at

**(b) [Federal cost share.]**—Notwithstanding any other provision of law or contract, 50 percent of the costs incurred in the repair, modification or replacement, together with associated costs, of the Hayden-Rhodes Aqueduct siphons at Salt River, New River, Hassayampa River, Jackrabbit Wash, Centennial Wash and Aqua Fria River, all features of the Central Arizona Project, shall be borne by the United States and shall be nonreimbursable and nonreturnable and the remaining costs shall be allocated to the authorized purposes of the project. (106 Stat. 4753)

TITLE XL—NATIONAL HISTORIC PRESERVATION  
ACT AMENDMENTS

**Sec. 4001. [Short title.]**—This title may be cited as the "National Historic Preservation Act Amendments of 1992". (16 U.S.C. § 470.)

**Sec. 4002. [Policy.]**—Section 2 of the National Historic Preservation Act (16 U.S.C. § 470-1.) is amended as follows—

(1) In paragraph (2) insert "and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments" after "community of nations".

(2) In paragraph (6) insert "Indian tribes and Native Hawaiian organizations" after "local governments".

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the 915; 16 U.S.C. § 470-1) appear in Volume IV National Historic Preservation Act, Act of at page 2304. October 15, 1966 Public Law 89-665 (80 Stat.

**Sec. 4003. [Review of threats to properties.]**—Section 101(a) of the National Historic Preservation Act (16 U.S.C. § 470a(a)) is amended by adding the following new paragraph at the end thereof:

"(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant

3988 HISTORIC PRESERVATION ACT AMENDMENTS

threats to properties included in, or eligible for inclusion on, the National Register, in order to—

"(A) determine the kinds of properties that may be threatened;

"(C) develop and submit to the President and Congress recommendations for appropriate action." (106 Stat. 4753)

**Sec. 4004. [State Historic Preservation Programs.]**—Section 101(b) of the National Historic Preservation Act (16 U.S.C. § 470a(b)) is amended as follows:

(1) Amend paragraph (2) to read as follows:

"(2)(A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

"(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

"(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

"(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system—

"(i) establishes and maintains substantially similar accountability standards; and

"(ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards."

(2) Amend paragraph (3) as follows:

(A) In subparagraph (G), strike "relating to the Federal and State Historic Preservation Programs; and" and insert "in historic preservation;".

(B) In subparagraph (H), strike the period at the end thereof and insert a semicolon.

(C) Add at the end thereof the following new subparagraphs—

"(I) consult with appropriate Federal agencies in accordance with this Act on—

"(i) Federal undertakings that may affect historic properties; and

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3989

"(ii) the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to such properties; and

"(J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance."

(3) Amend paragraph (5) by striking "1980" and inserting "1992".

(4) Add at the end thereof the following new paragraphs: "(6)(A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State—

"(i) Identification and preservation of historic properties.

"(ii) Determination of the eligibility of properties for listing on the National Register. (106 Stat. 4753)

"(iii) Preparation of nominations for inclusion on the National Register.

"(iv) Maintenance of historical and archaeological data bases.

"(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

"(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if—

"(i) the State Historic Preservation Officer has requested the additional responsibility;

"(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);

"(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

"(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by Officer pursuant to such contract or cooperative agreement; and

"(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

"(C) For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

"(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.". (106 Stat 4753)

**Sec. 4005. [Certification of local governments.]**—Section 101(c) of the National Historic Preservation Act (16 U.S.C. § 470a(c)) is amended by adding at the end thereof the following new paragraph:

"(4) For the purposes of this section the term—

"(A) 'designation' means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

"(B) 'Protection' means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c)". (106 Stat. 4753)

**Sec. 4006. [Tribal historic preservation programs.]—(a) [Revision of existing law.]**—Section 101 of the National Historic Preservation Act (16 U.S.C. § 470a) is amended as follows:

(1) Redesignate subsections (d), (e), (f), (g), and (h) as subsections (e), (f), (g), (h), and (i), respectively.

(2) Insert after subsection (c) the following new subsection:

"(d)(1)(A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in reserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

"(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

"(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1994.

"(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3), with

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3991

respect to tribal lands, as such responsibilities may be modified for tribal program through regulations issued by the Secretary, if-

"(A) the tribe's chief governing authority so requests;

"(B) the tribe designates a tribal preservation officer to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;

"(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

"(D) the Secretary determines, after consulting with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program-

"(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);

"(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;

"(iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and

"(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan. (106 Stat. 4755)

"(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

"(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) on tribal land, if-

"(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

"(B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

3992 HISTORIC PRESERVATION ACT AMENDMENTS

"(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

"(i) the tribe's traditional cultural authorities;

"(ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and

"(iii) the interested public.

"(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

"(6)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

"(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

"(C) In carrying out his or her responsibilities under subsection (b)(3), the State Historic Preservation Officer for the State of Hawaii shall—

"(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

"(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

"(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan."

**(b) [Conforming amendment.]**—Section 110(c) of the National Historic Preservation Act (16 U.S.C. § 470h-2(c)) is amended by striking "101(g)" and inserting "101(h)". (106 Stat. 4755)

**Sec. 4007. [Matching grants.]**—Section 101(e) of the National Historic Preservation Act, (16 U.S.C. § 470a) as redesignated by section 4006(a)(1) of this title, is amended as follows—

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3993

(1) Amend paragraph (1) to read as follows: "(1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act."

(2) Add the following at the end thereof: "(4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

"(5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

"(6)(A) As part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. § 1681), the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled 'Joint Resolution to approve the "Compact of Free Association" between the United States and Government of Palau, and for other purposes' (48 U.S.C. § 1681). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

"(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified. (106 Stat. 4758)

**Sec. 4008. [Education and training.]**—Section 101 of the National Historic Preservation Act (16 U.S.C. § 470a), as amended by section 4005 of this Act, is further amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

"(2) The education and training program described in paragraph (1) shall include—

"(A) new standards and increased preservation training opportunities for Federal workers involved in preservation related functions;

"(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

"(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs;

"(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training—

"(i) distribution of information on preservation technologies;

"(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

"(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation." (106 Stat. 4758)

**Sec. 4009. [Requirements for awarding of grants.]**—Section 102 of the National Historic Preservation Act (16 U.S.C. § 470b) is amended as follows:

(1) Amend paragraph (3) of subsection (a) to read as follows: "(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) in any one fiscal year."

(2) In subsection (b) strike ", in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory for the Secretary".

(3) Add at the end thereof the following new subsections:

"(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

"(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6)." (106 Stat. 4759)

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3995

**Sec. 4010. [Apportionment of grant funds.]**—Section 103 of the National Historic Preservation Act (16 U.S.C. § 470c) is amended as follows:

(1) In subsection (a) strike "for comprehensive statewide historic surveys and plans under this Act," and insert "for the purposes this Act".

(2) In subsection (b) strike "by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans." and insert "as the Secretary determines to be appropriate."

(3) At the end of subsection (b) insert "The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register." (106 Stat. 4759)

**Sec. 4011. [Extension of authorization for Historic Preservation Fund.]**—Section 108 of the National Historic Preservation Act (16 U.S.C. § 470h-2) is amended by striking "1992" and inserting "1997". (106 Stat. 4760)

**Sec. 4012. [Federal agency historic preservation programs.]**—Section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) is amended as follows:

(1) In subsection (a)(1) strike "101(f)" and insert "101(g)".

(2) Amend subsection (a)(2) to read as follows: "(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure-

"(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

"(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

"(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

"(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

"(E) that the agency's procedures for compliance with section 106—

"(i) are consistent with regulations issued by the Council pursuant to section 211;

"(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and

## 3996 HISTORIC PRESERVATION ACT AMENDMENTS

implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

"(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3002(c))."

(3) Add at the end thereof the following new subsections:

"(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

"(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts." (106 Stat. 4760)

**Sec. 4013. [Lease or exchange of Federal housing properties.]**—Section 111(a) of the National Historic Preservation Act (16 U.S.C. § 470h-3(a)) is amended by striking "may, after consultation with the Advisory Council on Historic Preservation," and inserting "after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may". (106 Stat. 4761)

**Sec. 4014. [Professional standards.]**—Title I of the National Historic Preservation Act (16 U.S.C. § 470 et seq.) is amended by adding at the end thereof the following new section:

"Sec. 112. [Professional standards.]—(a) [In general.]—Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following—

"(1)(A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3997

in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

"(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved. (16 U.S.C. § 470h-4.)

"(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

"(b) [Guidelines.]—In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to—

"(1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;

"(2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

"(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

"(4) encourage owners who are undertaking archaeological excavations to—

"(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

"(B) donate or lend artifacts of research significance to an appropriate research institution; and

"(C) allow access to artifacts for research purposes;

"(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization." (106 Stat. 4761)

**Sec. 4015. [Interstate and international traffic in antiquities.]**—Title I of the National Historic Preservation Act (16 U.S.C. § 470 et seq.) is amended by adding at the end thereof the following new section after section 112:

"Sec. 113. [Interstate and international traffic in antiquities.]—

"(a) [Study.]—In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities. (16 U.S.C. § 470h-5.)

"(b) [Consultation.]—In conducting the study described in subsection (a) the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

"(c) [Report.]—Not later than 18 months after the date of enactment of this section, the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a).

"(d) [Authorization.]—There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a), such sums to remain available until expended." (106 Stat. 4762)

**Sec. 4016. [Membership of Advisory Council on Historic Preservation.]**—Section 201(a) of the National Historic Preservation Act (16 U.S.C. § 470i(a)) is amended as follows:

(1) Strike "and" at the end of paragraph (9).

(2) Strike the period at the end of paragraph (10) and insert "; and".

(3) Add at the end thereof the following new paragraph: "(11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President."

**Sec. 4017. [Authorization of appropriations for Advisory Council on Historic Preservation.]**—Section 212(a) of the National Historic Preservation Act (16 U.S.C. § 470) and following is amended by striking the last sentence

October 30, 1992

HISTORIC PRESERVATION ACT AMENDMENTS 3999

thereof and inserting "There are authorized to be appropriated for purposes of this title not to exceed \$5,000,000 for each of the fiscal years 1993 through 1996.". (16 U.S.C. § 470t.)

**Sec. 4018. [Advisory Council regulations.]**—Section 211 of the National Historic Preservation Act (16 U.S.C. § 4709) is amended by striking the period at the end of the first sentence and inserting "in its entirety.". (106 Stat. 4763)

**Sec. 4019. [Definitions.]—(a) [Amendment and addition of definitions.]**—Section 301 of the National Historic Preservation Act (16 U.S.C. 470w) is amended as follows:

(1) In paragraph (1) strike "Code," and all that follows through the end of the paragraph, and insert in lieu thereof "Code.".

(2) In paragraph (2) strike "the Trust Territories of the Pacific Islands" and insert "the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau".

(3) Amend paragraph (4) to read as follows: "(4) 'Indian tribe' or 'tribe' means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

(4) In paragraph (5) strike "Register" and all that follows through the end of the paragraph and insert "Register, including artifacts, records, and material remains related to such a property or resource.".

(5) Amend paragraph (7) to read as follows: "(7) 'Undertaking' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

"(A) those carried out by or on behalf of the agency,

"(B) those carried out with Federal financial assistance;

"(C) those requiring a Federal permit license, or approval; and

"(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.".

(6) In paragraph (8) strike "maintenance and reconstruction," and insert "maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities,".

(7) In paragraph (9) strike "urban area" and insert "area".

(8) In paragraph (10) strike "urban area of one or more neighborhoods and" and insert "area".

(9) In paragraph (11) after "of the Interior" insert "acting through the Director of the National Park Service".

October 30, 1992

4000 HISTORIC PRESERVATION ACT AMENDMENTS

(10) In paragraph (12) strike "and architecture" and insert "architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture".

(11) In paragraph (13) strike "archaeology" and insert "prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture".

(12) Add at the end thereof the following new paragraphs: "(14) 'Tribal lands' means—

"(A) all lands within the exterior boundaries of any Indian reservation; and

"(B) all dependent Indian communities.

"(15) 'Certified local government' means a local government whose local historic preservation program has been certified pursuant to section 101(c).

"(16) 'Council' means the Advisory Council on Historic Preservation established by section 201. (106 Stat. 4763)

"(17) 'Native Hawaiian' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

"(18) 'Native Hawaiian organization' means any organization which—

"(A) serves and represents the interests of Native Hawaiians;

"(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

"(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii."

**(b) [Technical amendment.]**—Section 201(a) of the National Historic Preservation Act (16 U.S.C. § 470i(a)) is amended by striking "(hereafter referred to as the 'Council')". (106 Stat. 4763)

**Sec. 4020. [Access to information.]**—Section 304 of the National Historic Preservation Act (16 U.S.C. § 4702-3) is amended to read as follows:

"Sec. 304. [Access to information.]—"(a) [Authority to withhold from disclosure.]—The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

"(1) cause a significant invasion of privacy;

"(2) risk harm to the historic resources; or

"(3) impede the use of a traditional religious site by practitioners.

"(b) [Access determination.]—When the head of a Federal agency or other public official has determined that information should be withheld from the

October 30, 1992

PRESERVATION TECHNOLOGY AND TRAINING 4001

public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

"(c) [Consultation with Council.]—When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b)."

**Sec. 4021. [Recommendations.]**—The Secretary of the Interior, in consultation with the Advisory Council, shall seek to ensure that historic properties preserved under the National Historic Preservation Act fully reflect the historical experience of this nation.

**Sec. 4022. [National Center for Preservation Technology and Training.]**—The National Historic Preservation Act (16 U.S.C. § 470 and following) is amended by adding the following at the end thereof. (106 Stat.4765; 16 U.S.C. § 470a note; 16 U.S.C. § 470w-3.)

"TITLE IV—NATIONAL CENTER FOR  
PRESERVATION TECHNOLOGY AND TRAINING

"Sec. 401. [Findings.]—"The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial. (16 U.S.C. § 470x-1.)

"Sec. 402. [Definitions.]—"For the purposes of this title—

"(1) the term 'Board' means the National Preservation Technology and Training Board established pursuant to section 404.

"(2) The term 'Center' means the National Center for Preservation Technology and Training established pursuant to section 403.

"(3) The term 'Secretary' means the Secretary of the Interior.

"Sec. 403. [Establishment of national center.]—"(a)[Establishment.]—There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana. (16 U.S.C. § 470x-2.)

"(b) [Purposes.]—The purposes of the Center shall be to—"(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

"(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

October 30, 1992

4002      PRESERVATION TECHNOLOGY AND TRAINING

"(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

"(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

"(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

"(c) [Programs.]—Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405.

"(d) [Executive Director.]—The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

"(e) [Assistance from Secretary.]—The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities. (106 Stat. 4766; 16 U.S.C. § 470x-3.)

"Sec. 404. [Preservation Technology and Training Board.]—

"(a) [Establishment.]—There is established a Preservation Technology and Training Board.

"(b) [Duties.]—The Board shall—

"(1) provide leadership, policy advice, and professional oversight to the Center;

"(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

"(3) submit an annual report to the President and the Congress.

"(c) [Membership.]—The Board shall be comprised of—"(1) the Secretary, or the Secretary's designee;

"(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and

"(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

"Sec. 405. [Preservation grants.]—"(a) [In general.]—The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure

October 30, 1992

PRESERVATION TECHNOLOGY AND TRAINING 4003

an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

"(b) [Grant requirements.]—(1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

"(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

"(3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

"(c) [Eligible applicants.]—Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, nonprofit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

"(d) [Standards.]—All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

"(e) [Authorization of appropriations.]—There is authorized to be appropriated to carry out this section such sums as may be necessary.

"Sec. 406. [General provisions.]—"(a) [Acceptance if grants and transfers.]—The Center may accept—

"(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

"(2) transfers of funds from other Federal agencies.

"(b) [Contracts and cooperative agreements.]—Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title.

"(c) [Authorization of appropriations.]—There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices. (106 Stat. 4767; 16 U.S.C. § 470x-4; 16 U.S.C. § 470x-5.)

"Sec. 407. [National Park Service preservation.]—"In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties." (106 Stat. 4765; 16 U.S.C. § 470x-6.)

**Sec. 4023. [Requirement for specific authorization for projects under the Historic Sites, Buildings, and Antiquities Act.]**—Section 6 of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. §§ 461, 466, 467) is amended to read as follows:

"Sec. 6. [Requirement for specific authorization for projects under the Historic Sites, Buildings, and Antiquities Act.]—(a) [In general.]—Except as provided in subsection (b), notwithstanding any other provision of law, no funds appropriated or otherwise made available to the Secretary of the Interior to carry out section 2(e) or 2(f) may be obligated or expended after the date of enactment of this section—

"(1) unless the appropriation of such funds has been specifically authorized by law enacted on or after the date of enactment of this section; or

"(2) in excess of the amount prescribed by law enacted on or after such date.

"(b) [Savings provision.]—Nothing in this section shall prohibit or limit the expenditure or obligation of any funds appropriated prior to January 1, 1993.

"(c) [Authorization of appropriations.]—Except as provided by subsection (a), there is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine." (106 Stat.4768)

**Sec. 4024. [Martin Luther King, Junior, National Historic Site and Preservation District.]—(a) [Boundary modification.]**—Subsection (a) of the first section of the Act entitled "An Act to establish the Martin Luther King, Junior, National Historic Site in the State of Georgia, and for other purposes" (Public Law 96-428; 94 Stat. 1839; 16 U.S.C. § 461.), establishing the Martin Luther King, Junior, National Historic Site and Preservation District, is amended by striking "numbered NASM/SERO/20, 109-C, and dated May 1980" and inserting in lieu thereof "number 489/80,013B, and dated September 1992".

**(b) [Limitation on appropriations.]**—Section 6 of Public Law 96-0428 (94 Stat. 1842; 16 U.S.C. § 461.) is amended by striking ", but not to exceed \$1,000,000 for development, \$100,000 or local planning, and \$3,500,000 for the acquisition of lands and interests therein". (106 Stat. 4768)

**Sec. 4025. [Secretarial report.]—(a) [Report.]**—Not later than one year after the date of enactment of this Act, the Secretary of the Interior shall prepare and submit to the Congress a report on the manner in which properties are listed or determined to be eligible for listing on the National Register, including but not limited to, the appropriateness of the criteria used in determining such eligibility, and the effect, if any, of such listing or finding of eligibility. (16 U.S.C. § 470a.)

**(b) [Preparation.]**—In preparing the report, the Secretary shall consult with, and consider the views and comments of other Federal agencies, as well as interested individuals and public and private organizations, and shall include

October 30, 1992

PRESERVATION TECHNOLOGY AND TRAINING 4005

representative comments received as an appendix to the report. (106 Stat.4769)

EXPLANATORY NOTE

**Legislative History.** H.R. 429, Public Law 202-575 in the 202<sup>nd</sup> Congress. Reported in House from Interior and Insular Affairs [Resources]; H.R. Repts. Nos. 102-114, Pt. 1 and 102-1016 (Conference). Passed House June 20, 1991. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 102-267. Passed Senate, amended, April 10, 1992. House concurred in Senate amendment with an amendment June 18, 1992. Senate concurred in House amendment with an amendment; vitiated concurrence in House amendment with an amendment; and insisted on its amendment July 31, 1992. House agreed to conference report October 5, 1992. October 8, Senate agreed to conference report.

October 28, 1993

4006

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1994**

[Extracts from] an Act making appropriations for energy and water development for the fiscal year ending September 30, 1994, and for other purposes. (Act of October 28, 1993, Public Law 103-126, 107 Stat. 1312)

\* \* \* \* \*

**CENTRAL VALLEY PROJECT RESTORATION FUND**

For carrying out the programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of the Central Valley Project Improvement Act, to remain available until expended, such sums as may be assessed and collected in the Central Valley Project Restoration Fund in fiscal year 1993 and such sums as become available in, and may be derived from, the Central Valley Project Restoration Fund in fiscal year 1994, pursuant to sections 3407(d), 3404(c)(3), 3405(f) and 3406(c)(1) of Public Law 102-575: *Provided*, That the Bureau of Reclamation is directed to levy additional mitigation and restoration payments totaling \$30,000,000 (October 1992 price levels), as authorized by section 3407(d) of Public Law 102-575: *Provided further*, That the Bureau of Reclamation is directed to assess and collect payments, revenues and surcharges in the amounts and manner authorized by sections 3404(c)(3), 3405(f) and 3406(c)(1) of Public Law 102-575, respectively. (107 Stat. 1324)

EXPLANATORY NOTES

**Not Codified.** This provision of the Act is not codified in the U.S. Code. Projects Authorization and Adjustment Act of 1992, Act of October 30, 1992 ( Public Law 102-575, 106 Stat. 4600), referenced above, appear in Volume V at page 3934.  
**Reference in the Text.** Sections 3404, 3405, 3406, and 3407 of the Reclamation

\* \* \* \* \*

**[Short title].**—This Act may be cited as the "Energy and Water Development Appropriations Act, 1994".

EXPLANATORY NOTES

**Editor's Note, Provisions Repeated in Appropriations Acts.** Provisions which are repeated in two or more appropriations acts appear herein only in the act in which such provisions are first used.  
**Legislative History.** H.R. 2445, Public Law 103-126 in the 103<sup>rd</sup> Congress. Reported in House from Appropriations; H.R. Repts. Nos.

October 28, 1993

ENERGY AND WATER DEVELOPMENT ACT OF 1994 4007

103-135 and 103-292, 103-305 (both from conference.) Considered and passed House June 23, 24, 1993. Considered and passed Senate, amended September 29, 30, 1993. House considered and recommitted conference report October 19, 1993. House agreed to conference report; receded and concurred in certain Senate amendments, in others with amendments October 26, 1993. Senate agreed to conference report; concurred in House amendments October 27, 1993.

February 12, 1994

4008

**EMERGENCY SUPPLEMENTAL APPROPRIATIONS  
ACT OF 1994**

[Extract from] an Act making emergency supplemental appropriations for the fiscal year ending September 30, 1994, and for other purposes. (Act of February 12, 1994, Public Law 103-211, 108 Stat. 3)

\* \* \* \* \*

**Sec. 407. [Repeals-Effective date.]**— Except for subsection (b) of section 3508, sections 3508 and 3509 of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act are repealed effective October 30, 1992: *Provided*, That the U.S. Army Corps of Engineers should proceed with the Secretary of the Interior to designate excess lands and transfer them pursuant to Public Law 93-599. (106 Stat. 4734, 4736; 108 Stat. 41)

\* \* \* \* \*

EXPLANATORY NOTES

**Not Codified.** Section 407 above is not codified in the U.S. Code.

**References in the Text.** Sections 3508 and 3509 of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4731) referenced above appear in Volume V at page 3961.

Public Law 93-599 referenced above does not appear herein.

**Editor's Note.** Provisions repeated in two or more appropriations. Acts appear herein only

in Act in which such provisions first used.

**Legislative History.** H.R. 3759, Public Law 103-211 in the 103<sup>d</sup> Congress. Reported in House from Appropriations. H.R. Rept. No. 103-415. Considered and passed House February 3 1994. Considered and passed Senate, amended on February 9, 10, 1994. House and Senate agreed to conference report on February 11, 1994. Conference Comm. Rept. No. 103-424.

**NORTHERN CHEYENNE INDIAN RESERVED WATER  
RIGHTS SETTLEMENT AMENDMENTS;  
SAN CARLOS APACHE TRIBE WATER  
RIGHTS SETTLEMENT ACT AMENDMENTS**

[Extracts from] an Act to make certain technical corrections [to Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992; San Carlos Apache Tribe Water Rights Settlement Act of 1992] (Act of May 31, 1994, Public Law 103-263, 108 Stat. 707)

**Section 1. [Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992.]-(a) [Environmental costs.]**—Section 7 of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186 et seq.) is amended by adding the following new subsections (f) and (g) and redesignating the succeeding subsections accordingly:

"(f) [Environmental costs.]—All costs associated with the Tongue River Dam Project for environmental compliance mandated by Federal law and fish and wildlife mitigation measures adopted by the Secretary are the sole responsibility of the United States. Funds for such compliance shall be appropriated pursuant to the authorization in subsection (e), and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act. The Secretary is authorized to expend not to exceed \$625,000 of funds appropriated pursuant to subsection (e) for fish and wildlife mitigation costs associated with Tongue River Dam construction authorized by the Act, and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act.

"(g) [Reimbursement to State of Montana.]—The Secretary shall reimburse Montana for expenditures for environmental compliance activities, conducted on behalf of the United States prior to enactment of this subsection (g), which the Secretary determines to have been properly conducted and necessary for completion of the Tongue River Dam Project. Subsequent to enactment of this subsection (g), the Secretary may not reimburse Montana for any such environmental compliance activities undertaken without the Secretary's prior approval."

**(b) [Authorizations.]**—The first sentence of section 4(c) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374; 106 Stat. 1186 et seq.) is amended to read as follows: "Except for authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and the authorization for environmental compliance activities for the Tongue River Dam Project contained in subsection 7(e), the authorization of appropriations

May 31, 1994

4010 NORTHERN CHEYENNE INDIAN WATER RIGHTS ACT

contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section." (108 Stat. 707)

**(c) [Effective date.]**—The amendments made by this section shall be considered to have taken effect on September 30, 1992.

EXPLANATORY NOTE

**Reference in the Text.** The Northern 1992 (Public Law 102-374, 106 Stat. 1186 et  
Cheyenne Indian Reserved Water Rights seq.) referenced above appears in Volume V at  
Settlement Act of 1992, Act of September 30, page 3747.

**Sec. 2. [San Carlos Apache Tribe Water Rights Settlement Act of 1992.]—(a) [Amendment.]**—Section 3704(d) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (Public Law 102-575) is amended by deleting "reimbursable" and inserting in lieu thereof "nonreimbursable".

**(b) [Effective date.]**—The amendment made by subsection (a) shall be considered to have taken effect on October 30, 1992. (108 Stat. 708)

EXPLANATORY NOTE

**Reference in the Text.** Section 3704 of the (Public Law 102-575, 106 Stat. 3740) referenced  
San Carlos Apache Tribe Water Rights above appears in Volume V at page 3974.  
Settlement Act of 1992, Act of October 30, 1992

\* \* \* \* \*

EXPLANATORY NOTES

**Not Codified.** This Act is not codified in the U.S. Code. from Natural Resources; H.R. Rept. 103-479, Pt. 1. Passed House, amended April 19, 1994.

**Legislative History.** S. 1654, Public Law 103-263 in 103<sup>d</sup> Congress. Reported in Senate from Indian Affairs; S. Rept. 103-191. Passed Senate November 24, 1993. Reported in House Senate concurred in House amendment with amendments May 19, 1994. House concurred in Senate amendments May 23, 1994.

**YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS  
SETTLEMENT ACT OF 1994**

An Act to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes [including the "Auburn Indian Restoration Act" (108 Stat. 4533, 25 U.S.C. § 1300 *L*); Application of The Warren Act to the Central Utah Project; the "Mountain Park Project Act of 1994"; the Act of San August 16, 1957 (71 Stat. 372) authorizing the San Angelo Federal reclamation project, Texas; Conveyance to The Big Horn County School District, Shoshone Project, Wyoming; amendment of the Reclamation Development Act of 1974 (Public Law 93-493; 88 Stat. 1488) concerning operation of Lake Powell; amendment of the Mni Wiconi Project Act of 1988 (102 Stat. 2566); amendment of "An Act to authorize rehabilitation of the Belle Fourche irrigation project . . ." (Public Law 98-157, 97 Stat. 989); the "Stagecoach Reservoir Project Act of 1994", also known as the Upper Yampa Conservancy Project (108 Stat. 4547); the "Mancos Project Private Power Development Authorization Act of 1994"; Yakima River Basin Water Enhancement Project; amendment of section 7 of the Migratory Bird Conservation Act (16 U.S.C. § 715f)]. (Act of October 31, 1994, Public Law 103-434, 108 Stat. 4526)

**TITLE I-YAVAPAI-PRESCOTT INDIAN TRIBE  
WATER RIGHTS SETTLEMENT**

**Sec. 101. [Short Title.]**—This title may be cited as the "Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994". (108 Stat. 4526)

**Sec. 102. [Congressional findings and declarations.]**—

**(a) [Findings.]**—The Congress finds that—(1) it is the policy of the United States, in fulfillment of its trust responsibility to the Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self sufficiency depend on the development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in and western States;

(4) on June 7, 1935, and by actions subsequent thereto, the United States established a reservation for the Yavapai-Prescott Indian Tribe in Arizona adjacent to the city of Prescott;

(5) proceedings to determine the full extent of Yavapai-Prescott Tribe's water rights are currently pending before the Superior Court of the State of Arizona in and for Maricopa County, as part of the general adjudication of the Gila River system and source;

(6) recognizing that final resolution of the general adjudication will take many years and entail great expense to all parties, prolong uncertainty as to the full extent of the Yavapai Prescott Tribe's entitlement to water and the

October 31, 1994

4012 YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS

availability of water supplies to fulfill that entitlement, and impair orderly planning and development by the Tribe and the city of Prescott; the Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have sought to settle all claims to water between and among them;

(7) representatives of the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have negotiated a Settlement Agreement to resolve all water rights claims between and among them, and to provide the Tribe with long term, reliable water supplies for the orderly development and maintenance of the Tribe's reservation;

(8) pursuant to the Settlement Agreement and the Water Service Agreement, the quantity of water made available to the Yavapai-Prescott Tribe by the city of Prescott and the Chino Valley Irrigation District will be secured, such Agreements will be continued in perpetuity, and the Tribe's continued on-reservation use of water for municipal and industrial, recreational and agricultural purposes will be provided for;

(9) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and assist in firming up the long-term water supplies of the city of Prescott and the Yavapai-Prescott Tribe so as to enable the Tribe to utilize fully its water entitlements in developing a diverse, efficient reservation economy; and

(10) the assignment of the CAP contract of the Yavapai-Prescott Tribe and the CAP subcontract of the city of Prescott is a cost-effective means to ensure reliable, long-term water supplies for the Yavapai-Prescott Tribe and to promote efficient, environmentally sound use of available water supplies in the Verde River basin. (108 Stat. 4526)

**(b) [Declaration of purposes.]**—The Congress declares that the purposes of this title are—

(1) to approve, ratify and confirm the Settlement Agreement among the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement;

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Yavapai-Prescott Tribe as provided in the Settlement Agreement and this title;

(4) to require that expenditures of funds obtained through the assignment of CAP contract entitlements by the Yavapai-Prescott Tribe and Prescott for the acquisition or development of replacement water supplies in the Verde River basin shall not be inconsistent with the goals of the Prescott Active

October 31, 1994

YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS 4013

Management Area, preservation of riparian habitat, flows and biota of the Verde River and its tributaries; and

(5) to repeal section 406(k) of Public Law 101-628 which authorizes \$30,000,000 in appropriations for the acquisition of land and water resources in the Verde River basin and for the development thereof as an alternative source of water for the Fort McDowell Indian Community. (108 Stat. 4526)

EXPLANATORY NOTE

**Reference in the Text.** The Act of Stat. 4469) referenced above appears in Volume November 28, 1990 (Public Law 101-628, 104 V at page 3708.

**Sec. 103. [Definitions.]**—For purposes of this title: (1) The term "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1521 et seq.).

EXPLANATORY NOTE

**Reference in the Text.** Title III of the above appears in Volume IV at page 2398. Colorado River Basin Project Act of 1968, Act Annotations and amendments of the 1968 Act of September 30, 1968 (Public Law 90-537, 82 appear in Supplement II at page S995. Stat.885; 43 U.S.C. § 1521 et seq.) referenced

(2) The term "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 1, 1988, for the delivery of water and repayment of costs of the Central Arizona Project.

(3) The term "CVID" means the Chino Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(4) The term "Prescott AMA" means the Active Management Area, established pursuant to Arizona law and encompassing the Prescott ground water basin, wherein the primary goal is to achieve balance between annual ground water withdrawals and natural and artificial recharge by the year 2025.

(5) The term "Prescott" means the city of Prescott, an Arizona municipal corporation.

(6) The term "Reservation" means the reservation established by the Act of June 7, 1935 (49 Stat. 332) and the Act of May 18, 1956 (70 Stat. 157) for the Yavapai-Prescott Tribe of Indians.

EXPLANATORY NOTE

**Reference in the Text.** The Acts of June 7, 157) referenced above do not appear herein. 1935 (49 Stat. 332) and May 18, 1956 (70 Stat.

October 31, 1994

4014 YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS

(7) The term "Secretary" means the Secretary of the United States Department of the Interior.

(8) The term "Settlement Agreement" means that agreement entered into by the city of Prescott, the Chino Valley Irrigation District, the Yavapai-Prescott Indian Tribe, the State of Arizona, and the United States, providing for the settlement of all water claims between and among them.

(9) The term "Tribe" means the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary.

(10) The term "Water Service Agreement" means that agreement between the Yavapai-Prescott Indian Tribe and the city of Prescott, as approved by the Secretary, providing for water, sewer, and effluent service from the city of Prescott to the Yavapai-Prescott Tribe. (108 Stat. 4527)

**Sec. 104. [Ratification of Settlement Agreement.]—(a) [Approval of Settlement Agreement.]—**To the extent the Settlement Agreement does not conflict with the provisions of this title, such Agreement is approved, ratified and confirmed. The Secretary shall execute and perform such Agreement, and shall execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

**(b) [Perpetuity.]—**The Settlement Agreement and Water Service Agreement shall include provisions which will ensure that the benefits to the Tribe thereunder shall be secure in perpetuity. Notwithstanding the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. § 81) relating to the term of the Agreement, the Secretary is authorized and directed to approve the Water Service Agreement with a perpetual term. (108 Stat. 4528)

EXPLANATORY NOTE

**Reference in the Text.** Section 2103 of the August 27, 1958 (Public Law 85-770, 72 Stat. Revised Statutes of the United States, Act of 927; 25 U.S.C. § 81) does not appear herein.

**Sec. 105. [Assignment of CAP water.]—**The Secretary is authorized and directed to arrange for the assignment of, or to purchase, the CAP contract of the Tribe and the CAP subcontract of the city of Prescott to provide funds for deposit into the Verde River Basin Water Fund established pursuant to section 106.

**Sec. 106. [Replacement Water Fund—Contracts.]—(a) [Fund.]—**The Secretary shall establish a fund to be known as the "Verde River Basin Water Fund" (hereinafter called the "Fund") to provide replacement water for the CAP water relinquished by the Tribe and by Prescott. Moneys in the Fund shall be available without fiscal year limitations.

**(b) [Content of Fund.]—**The Fund shall consist of moneys obtained through the assignment or purchase of the contract and subcontract referenced in section

October 31, 1994

YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS 4015

105, appropriations as authorized in section 109, and any moneys returned to the Fund pursuant to subsection (d) of this section.

**(c) [Payments from Fund.]**—The Secretary shall, subsequent to the publication of a statement of findings as provided in section 112(a), promptly cause to be paid from the Fund to the Tribe the amounts deposited to the Fund from the assignment or purchase of the Tribe's CAP contract, and, to the city of Prescott, the amounts deposited to the Fund from the assignment or purchase of the city's CAP subcontract.

**(d) [Contracts.]**—The Secretary shall require, as a condition precedent to the payment of any moneys pursuant to subsection (c), that the Tribe and Prescott agree, by contract with the Secretary, to establish trust accounts into which the payments would be deposited and administered, to use such moneys consistent with the purpose and intent of section 107, to provide for audits of such accounts, and for the repayment to the Fund, with interest, any amount determined by the Secretary not to have been used within the purpose and intent of section 107.

**Sec. 107. [Expenditures of Funds.]—(a) [By the city.]**—All moneys paid to Prescott for relinquishing its CAP subcontract and deposited into a trust account pursuant to section 106(d), shall be used for the purposes of defraying expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished under this title. Alternative sources shall be understood to include, but not be limited to, retirement of agricultural land and acquisition of associated water rights, development of ground water resources outside the Prescott Active Management Area established pursuant to the laws of the State of Arizona, and artificial recharge; except that none of the moneys paid to Prescott may be used for construction or renovation of the city's existing waterworks or water delivery system.

**(b) [By the Tribe.]**—All funds paid to the Tribe for relinquishing its CAP contract and deposited into a trust account pursuant to section 106(d), shall be used to defray its water service costs under the Water Service Agreement or to develop and maintain facilities for on-reservation water or effluent use.

**(c) [No per capita payments.]**—No amount of the Tribe's portion of the Fund may be used to make per capita payments to any member of the Tribe, nor may any amount of an payment made pursuant to section 106(c) be distributed as a dividend or per capita payment to any constituent, member, shareholder, director or employee of Prescott.

**(d) [Disclaimer.]**—Effective with the payment of funds pursuant to section 106(c), the United States shall not be liable for any claim or cause of action arising from the use of such funds by the Tribe or by Prescott. (108 Stat. 4529)

**Sec. 108. [Environmental compliance.]**—The Secretary, the Tribe and Prescott shall comply with all applicable Federal environmental and State environmental and water laws in developing alternative water sources pursuant to section 107(a). Development of such alternative water sources shall not be

October 31, 1994

4016 YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS

inconsistent with the goals of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries.

**Sec. 109. [Appropriations authorization and repeal.]—(a) [Authorization.]**—There are authorized to be appropriated to the Fund established pursuant to section 106(a):

(1) Such sums as may be necessary, but not to exceed \$200,000, to the Secretary for the Tribe's costs associated with judicial confirmation of the settlement.

(2) Such sums as may be necessary to establish, maintain and operate the gauging station required under section 111(e).

**(b) [State contribution.]**—The State of Arizona shall contribute \$200,000 to the trust account established by the Tribe pursuant to the Settlement Agreement and section 106(d) for uses consistent with section 107(b).

**(c) [Repeal.]**—Subsection 406(k) of the Act of November 28, 1990 (Public Law 101-628; 104 Stat. 4487) is repealed. (108 Stat. 4530)

EXPLANATORY NOTE

**Reference in the Text.** The Act of Stat. 4469) referenced in section 109(c) above November 28, 1990 (Public Law 101-628, 104 appears in Volume V at page 3708.

**Sec. 110. [Satisfaction of claims.]—(a) [Waiver.]**—The benefits realized by the Tribe or any of its members under the Settlement Agreement and this title shall constitute full and complete satisfaction of all claims by the Tribe and all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water and effluent) from time immemorial to the effective date of this title, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this title. Nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's reservation.

**(b) [Waiver and release.]**—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized and required, as a condition to the implementation of this title, to execute a waiver and release, except as provided in subsection (d) and the Settlement Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or 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.

October 31, 1994

YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS 4017

**(c) [Waiver by United States.]**—Except as provided in subsection (d) and the Settlement Agreement, the United States, in its own right or on behalf of the Tribe, shall not assert any claim against the State of Arizona or any political subdivision thereof, or against any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona based upon water rights or injuries to water rights of the Tribe and its members or based upon water rights or injuries to water rights held by the United States on behalf of the Tribe and its members.

**(d) [Rights retained.]**—In the event the waivers of claims authorized in subsection (b) of this section do not become effective pursuant to section 112(a), the Tribe, and the United States on behalf of the Tribe, shall retain the right to assert past and future water rights claims as to all reservation lands.

**(e) [Jurisdiction.]**—The United States District Court for the District of Arizona shall have original jurisdiction of all actions arising under this title, the Settlement Agreement and the Water Service Agreement, including review pursuant to title 9, United States Code, of any arbitration and award under the Water Service Agreement.

**(f) [Claims.]**—Nothing in this title shall be deemed to prohibit the Tribe, or the United States on behalf of the Tribe, from asserting or maintaining any claims for the breach or enforcement of the Settlement Agreement or the Water Service Agreement.

**(g) [Disclaimer.]**—Nothing in this title shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the reservation of any member of the Tribe.

**(h) [Full satisfaction of claims.]**—Payments made to Prescott under this title shall be in full satisfaction for any claim that Prescott might have against the Secretary or the United States related to the allocation, reallocation, relinquishment or delivery of CAP water. (108 Stat.4530)

**Sec. 111. [Miscellaneous provisions.]—(a) [Joining of parties.]**—In the event any party to the Settlement Agreement should file a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, naming the United States of America or the Tribe as parties, authorization is hereby granted to join the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived. In the event Prescott submits a dispute under the Water Service Agreement to arbitration or seeks review by the United States District Court for the District of Arizona of an arbitration award under the Water Service Agreement, any claim by the Tribe to sovereign immunity from such arbitration or review is hereby waived.

**(b) [No reimbursement.]**—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of the Settlement Agreement or this title against any lands within the Yavapai-Prescott Indian

October 31, 1994

4018 YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS

Reservation, and no assessment shall be made with regard to such costs against such lands.

**(c) [Water management.]**—The Tribe shall establish a ground water management plan for the Reservation which, except to be consistent with the Water Service Agreement, the Settlement Agreement and this title, will be compatible with the ground water management plan in effect for the Prescott Active Management Area and will include an annual information exchange with the Arizona Department of Water Resources. In establishing a ground water management plan pursuant to this section, the Tribe may enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation. Notwithstanding any other law, the Tribe may establish a tribal water code, consistent with the above-described water management plan, under which the Tribe will manage, regulate, and control the water resources granted it in the Settlement Act, the Settlement Agreement, and the Water Service Agreement, except that such management, regulation and control shall not authorize any action inconsistent with the trust ownership of the Tribe's water resources.

**(d) [Gauging station.]**—The Secretary, acting through the Geological Survey, shall establish, maintain and operate a gauging station at the State Highway 89 bridge across Granite Creek adjacent to the reservation to assist the Tribe and the CVID in allocating the surface flows from Granite Creek as provided in the Settlement Agreement. (108 Stat. 4531)

**Sec. 112. [Effective date.]—(a) [Waivers and releases.]**—The waivers and releases required by section 110(b) of this title shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1)(A) the Secretary has determined that an acceptable party, or parties, have executed contracts for the assignments of the Tribe's CAP contract and the city of Prescott's CAP subcontract, and the proceeds from the assignments have been deposited into the Fund as provided in section 106(d); or

(B) the Secretary has executed contracts for the acquisition of the Tribe's CAP contract and the city of Prescott's CAP subcontract as provided in section 106(d);

(2) the stipulation which is attached to the Settlement Agreement as exhibit 9.5, has been approved in substantially the form of such exhibit no later than December 31, 1995;

(3) the Settlement Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary; and

(4) the State of Arizona has appropriated and deposited into the Tribe's trust account \$200,000 as required by the Settlement Agreement.

**(b) [Deadline.]**—If the actions described in paragraphs (1), (2), (3), and (4) of subsection (a) have not occurred by December 31, 1995, any contract between Prescott and the United States entered into pursuant to section 106(d) shall not

October 31, 1994

AUBURN INDIAN RESTORATION ACT

4019

thereafter be effective, and any funds appropriated by the State of Arizona pursuant to the Settlement Agreement shall be returned by the Tribe to the State of Arizona.

**Sec. 113. [Other claim.]—(a) [Other Tribes.]**—Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Tribe.

**(b) [Federal agencies.]**—Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal agency, other than the Bureau of Indian Affairs on behalf of the Tribe. (108 Stat. 4532)

TITLE II—AUBURN INDIAN RESTORATION

**Sec. 201. [Short title.]**—This title may be cited as the "Auburn Indian Restoration Act". (108 Stat. 4533; 25 U.S.C. § 1300/.)

**Sec. 202. [Restoration of Federal recognition, rights, and privileges.]—(a) [Federal recognition.]**—Notwithstanding any other provision of law, Federal recognition is hereby extended to the Tribe. Except as otherwise provided in this title, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this title shall be applicable to the Tribe and its members.

**(b) [Restoration of rights and privileges.]**—Except as provided in subsection (d), all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement, or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85-671), are hereby restored and the provisions of such Act shall be inapplicable to the Tribe and its members after the date of enactment of this title.

EXPLANATORY NOTE

**Reference in the Text.** The Act of August 18, 1958 (Public Law 85-671) referenced in section 202(b) above and section 205(b) below does not appear herein.

**(c) [Federal services and benefits.]**—Notwithstanding any other provision of law and without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after the date of enactment of this title, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.

**(d) [Hunting, fishing, trapping, and water rights.]**—Nothing in this title shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members.

October 31, 1994

4020

AUBURN INDIAN RESTORATION ACT

**(e) [Indian Reorganization Act applicability.]**—The Act of June 18, 1934 (25 U.S.C. § 461 et seq.), shall be applicable to the Tribe and its members.

EXPLANATORY NOTE

**Reference in the Text.** The Act of June 18, 1934 (25 U.S.C. § 461 et seq.) referenced in section 202(e) above and section 204 below does not appear herein.

**(f) [Certain rights not altered.]**—Except as specifically provided in this title, nothing in this title shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied. (108 Stat. 4533)

**Sec. 203. [Economic development.]—(a) [Plan for economic development.]**—The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for the Tribe;

(2) in accordance with this section and not later than 2 years after the adoption of a tribal constitution as provided in section 107, develop such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress.

**(b) [Restrictions.]**—Any proposed transfer of real property contained in the plan developed by the Secretary under subsection (a) shall be consistent with the requirements of section 104. (108 Stat. 4534, 25 U.S.C. § 1300/1.)

**Sec. 204. [Transfer of land to be held in trust.]—(a) [Lands to be taken in trust.]**—The Secretary shall accept any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims on such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. § 461 et seq.).

**(b) [Former trust lands of the Auburn Rancheria.]**—Subject to the conditions specified in this section, real property eligible for trust status under this section shall include fee land held by the White Oak Ridge Association, Indian owned fee land held communally pursuant to the distribution plan prepared and approved by the Bureau of Indian Affairs on August 13, 1959, and Indian owned fee land held by persons listed as distributees or dependent members in such distribution plan or such distributees' or dependent members' Indian heirs or successors in interest.

**(c) [Lands to be part of the reservation.]**—Subject to the conditions imposed by this section, any real property conveyed or transferred under this section shall be taken in the name of the United States in trust for the Tribe or, as applicable, an individual member of the Tribe, and shall be part of the Tribe's

October 31, 1994

AUBURN INDIAN RESTORATION ACT

4021

reservation. (25 U.S.C. § 1300/2.)

**Sec. 205. [Membership rolls.]—(a) [Compilation of tribal membership roll.]**—Within 1 year after the date of the enactment of this title, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

**(b) [Criteria for enrollments.]**—(1) Until a tribal constitution is adopted pursuant to section 207, an individual shall be placed on the membership roll if the individual is living, is not an enrolled member of another federally recognized Indian tribe, is of United Auburn Indian Community ancestry, possesses at least one-eighth or more of Indian blood quantum, and if—

(A) the individual's name was listed on the Auburn Indian Rancheria distribution roll compiled and approved by the Bureau of Indian Affairs on August 13, 1959, pursuant to Public Law 85-671;

(B) the individual was not listed on, but met the requirements that had to be met to be listed on, the Auburn Indian Rancheria distribution list compiled and approved by the Bureau of Indian Affairs on August 13, 1959, pursuant to Public Law 85-671; or

(C) the individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A) or (B).

(2) After adoption of a tribal constitution pursuant to section 207, such tribal constitution shall govern membership in the Tribe, except that in addition to meeting any other criteria imposed in such tribal constitution, any person added to the membership roll shall be of United Auburn Indian Community ancestry and shall not be an enrolled member of another federally recognized Indian tribe.

EXPLANATORY NOTE

**Reference in the Text.** Public Law 85-671 does not appear herein.

**(c) [Conclusive proof of United Auburn Indian Community ancestry.]**—For the purpose of subsection (b), the Secretary shall accept any available evidence establishing United Auburn Indian Community ancestry. The Secretary shall accept as conclusive evidence of United Auburn Indian Community ancestry information contained in the Auburn Indian Rancheria distribution list compiled by the Bureau of Indian Affairs on August 13, 1959. (108 Stat. 4534; 25 U.S.C. § 1300/3.)

**Sec. 206. [Interim government.]**—Until a new tribal constitution and bylaws are adopted and become effective under section 207, the Tribe's governing body shall be an Interim Council. The initial membership of the Interim Council shall consist of the members of the Executive Council of the Tribe on the date of the enactment of this title, and the Interim Council shall continue to operate in the manner prescribed for the Executive Council under the tribal constitution adopted July 20, 1991, as long as such constitution is not contrary to Federal law. Any new members filling vacancies on the Interim council shall meet the enrollment criteria set forth in section 205(b) and be elected in the same manner as are Executive Council members under the tribal constitution adopted July 20, 1991. (25 U.S.C. § 1300/4.)

**Sec. 207. [Tribal constitution.]—(a) [Election—Time and procedure.]**—Upon the completion of the tribal membership roll under section 205(a) and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election for the purpose of adopting a constitution and bylaws for the Tribe. The election shall be held according to section 16 of the Act of June 18, 1934 (25 U.S.C. § 476), except that absentee balloting shall be permitted regardless of voter residence.

**(b) [Election of tribal officials—Procedures.]**—Not later than 120 days after the Tribe adopts a constitution and bylaws under subsection (a), the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted according to the procedures specified in subsection (a) except to the extent that such procedures conflict with the tribal constitution. (25 U.S.C. § 1300/5.)

**Sec. 208. [Definitions.]**—For purposes of this title: (1) The term "Tribe" means the United Auburn Indian Community of the Auburn Rancheria of California.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Interim Council" means the governing body of the Tribe specified in section 206.

(4) The term "member" means those persons meeting the enrollment criteria under section 205(b).

(5) The term "State" means the State of California.

(6) The term "reservation" means those lands acquired and held in trust by the Secretary for the benefit of the Tribe pursuant to section 204.

(7) The term "service area" means the counties of Placer, Nevada, Yuba, Sutter, El Dorado, and Sacramento, in the State of California. (25 U.S.C. § 1300/6.)

**Sec. 209. [Regulations.]**—The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this title. (108 Stat. 4535; 25 U.S.C. § 13001-7.)

### TITLE III—CENTRAL UTAH PROJECT

**Sec. 301. [Application of the Warren Act.]—(a) [Authority.]**—The Secretary of the Interior may—

(1) enter into contracts with private entities pursuant to the Act of February 21, 1911 (commonly known as the "Warren Act") (36 Stat. 925 et seq., chapter 141; 43 U.S.C. § 523 et seq.), for the impounding, storage, and carriage of nonproject water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes, using any facilities associated with the Central Utah Project, Utah; and

(2) enter into agreements, under terms and conditions authorized for contracts under such Act, with appropriate officials of other Federal agencies,

October 31, 1994

MOUNTAIN PARK PROJECT ACT OF 1994

4023

municipalities, public water districts and agencies, and States for impounding, storage, and carriage of nonproject water for purposes described in paragraph (1) using facilities referred to in such paragraph.

EXPLANATORY NOTE

**Reference in the Text.** The Act of February 21, 1911 (ch 141, 36 Stat. 925 et seq.; 43 U.S.C. § 523 et seq.) referenced in section 301(a) appears in Volume I at page 166. Annotations appear in Supplement I at page S41.

**(b) [Nonproject water defined.]**—In subsection (a), the term "nonproject water" means water that is not from a Federal reclamation project.

**Sec. 302. [Utah Reclamation Mitigation and Conservation Commission.]**—Section 301(d) of Public Law 102-575 (106 Stat. 4626) is amended by adding the following new paragraph at the end:

"(8) Any employee of the District or member of the Board of Directors of the District may serve as a member of the Commission." (108 Stat. 4536, Title III not codified.)

EXPLANATORY NOTE

**Reference in the Text.** Section 301(d) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 575) referenced in section 302 above appears in Volume V at page 3839.

TITLE IV—MOUNTAIN PARK PROJECT

**[Sec. 401. Short title.]**—This title may be cited as the "Mountain Park Project Act of 1994". (108 Stat. 4536)

**Sec. 402. [Modification of Mountain Park Project.]—(a) [In general.]**—The first section of the Act entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Mountain Park reclamation project, Oklahoma, and for other purposes" (Public Law 90-503; 82 Stat. 853) is amended by striking out "and controlling floods." and inserting in lieu thereof "controlling floods, and environmental quality activities. As used in this Act, the term 'environmental quality activity' means any activity that primarily benefits the quality of natural environmental resources." (43 U.S.C. § 616aaaa.)

EXPLANATORY NOTE

**Reference in the Text.** The Act of September 21, 1968 (Public Law 90-503, 82 Stat. 853) referenced in section 402 above appears in Volume IV at page 2388. Amendments and annotations to the 1968 Act appear in Supplement II at page S992.

**(b) [Reallocation of project costs.]**—Such Act is further amended by adding at the end the following new section:

"Sec. 7. (a)(1) Not later than 180 days after the date of enactment of the Mountain Park Project Act of 1994, the Secretary of the Interior (referred to in this section as the 'Secretary') shall "(A) conduct appropriate investigations to determine environmental quality activities that could be carried out for the Mountain Park project; and "(B) on the basis of the determination made under subparagraph (A), make an appropriate reallocation of the costs of the project under sections 2 and 3 (referred to in this section as 'project costs') to accommodate the environmental quality activities that the Secretary authorizes pursuant to this subsection.

"(2) In conducting investigations under this subsection, the Secretary shall examine the benefits to natural environmental resources achievable from an environmental quality activity that requires reallocating water or using facilities or land of the Mountain Park project, including any of the following activities:

"(A) Developing in-stream flows.

"(B) Developing wetland habitat.

"(C) Any other environmental quality activity that the Secretary determines to be appropriate to benefit the overall quality of the environment.

"(b)(1) Upon completion of the investigations under subsection (a)(2), the Secretary shall carry out the following:

"(A) The preparation of a proposed reallocation of project costs in conformance with subsection (a)(1)(B).

"(B) Negotiations with the Mountain Park Master Conservancy District (referred to in this section as the 'District') to amend the contract executed by the District pursuant to this Act to adjust the obligation of the District to repay project costs, as described in section 2, to reflect the reallocation of nonreimbursable project costs. (108 Stat. 4536)

"(2) For the purposes of paragraph (1), project costs associated with an environmental quality activity specified by the Secretary pursuant to subsection (a)(2) shall be nonreimbursable project costs.

"(c)(1) Notwithstanding any other provision of this Act, the Secretary is authorized to accept prepayment of the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city of Altus, Oklahoma, the city of Frederick, Oklahoma, or the city of Snyder, Oklahoma (or any combination thereof), and, upon receipt of such prepayment, the District's obligation to the United States shall be reduced by the amount of such costs, and any security held therefor, shall be released by the Secretary.

"(2) Any prepayment made pursuant to subsection (c)(1) shall realize to the United States an amount calculated by discounting the remaining repayment obligation by the interest rate determined in accordance with subsection (d).

October 31, 1994

SAN ANGELO FEDERAL RECLAMATION PROJECT 4025

"(d)(1) The Secretary of the Treasury shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget and the Department of Treasury Financial Manual. In determining the interest rate, the Secretary shall consider the price of the District's obligation if it were to be sold on the open market to a third party.

"(2) If the District uses tax-exempt financing to finance a prepayment under subsection (c)(1), then the interest rate by which the Secretary discounts the remaining payments due on the District's obligation shall be adjusted by an amount that compensates the United States for the direct or indirect loss of future tax revenues.

"(e) Notwithstanding any payment made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States."

**(c) [Repeal.]**—Section 3101 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4698) is repealed. (108 Stat. 4536, 43 U.S.C. § 616ffff-2.)

EXPLANATORY NOTE

**Reference in the Text.** Section 3101 of the 1992, Public Law 102-595 (106 Stat. 4698) Reclamation Projects Authorization and Adjustment Act of 1992, Act of October 30, appears in Volume V at page 3923.

TITLE V—SAN ANGELO FEDERAL RECLAMATION PROJECT

**Sec. 501. [Increase in irrigable acreage.]—(a) [In general.]**—The first section of the Act entitled "An Act to provide for the construction by the Secretary of the Interior of the San Angelo Federal reclamation project, Texas, and for other purposes", approved August 16, 1957 (71 Stat. 372), is amended by striking "ten thousand acres" and inserting "fifteen thousand acres".

EXPLANATORY NOTE

**Reference in the Text.** The Act of August 16, 1957 (Public Law 85-152, 71 Stat. 372) referenced in section 501 above appears in Volume II at page 1354.

**(b) [Amendment to contract.]**—The Secretary of the Interior is authorized to amend contract numbered 14-06-500-369 to reflect the amendment made by subsection (a), except that such amendment shall not be construed to require a change in the proportionate amount of all remaining payments due and payable to the United States by Tom Green County Water Control Improvement District No. 1. (108 Stat. 4538, 43 U.S.C. § 615o.)

October 31, 1994

4026

MNI WICONI ACT AMENDMENTS

TITLE VI—SHOSHONE FEDERAL RECLAMATION PROJECT

**Sec. 601. [Conveyance to The Big Horn County School District.]**—The Secretary of the Interior shall convey, by quit claim deed, to the Big Horn County School District, Wyoming, all right, title, and interest of the United States in and to the following described lands in Big Horn County, Wyoming: Lot 18 of Block 22, Lots 1-6 of Block 25, all of Block 21, and all within the town of Frannie, Wyoming, in the S1/2NW1/4NW1/4 and N1/2SW1/4NW1/4 of T. 58N., R. 97 W., Big Horn County. (108 Stat. 4538)

TITLE VII—LAKE POWELL

**Sec. 701. [Elimination of 24-hour restriction.]**—The second sentence of section 104(c) of the Reclamation Development Act of 1974 (Public Law 93-493; 88 Stat. 1488) is amended by striking "or three million gallons of water in any twenty-four-hour period,". (108 Stat. 4538)

EXPLANATORY NOTE

**Reference in the Text.** The Reclamation Development Act of 1974, Act of October 27, 1974 (Public Law 93-493, 88 Stat. 1488) referenced in section 701 above appears in Volume IV at page 2898. Amendments and annotations of the 1974 Act appear in Supplement II at page S1053.

TITLE VIII—MNI WICONI RURAL WATER SUPPLY PROJECT

**[Sec. 801. Short title.]**—This title may be cited as the "Mni Wiconi Act Amendments of 1994".

**Sec. 802. [Reference.]**—Whenever in this title a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Mni Wiconi Project Act of 1988 (102 Stat. 2566). (108 Stat. 4539)

EXPLANATORY NOTE

**Reference in the Text.** The Mni Wiconi Project Act of 1988, Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2566) referenced in section 802 appears in Volume V at page 3593.

**Sec. 803. [Findings and purposes.]—(a) [Findings.]**—Subsection (a) of section 2 (102 Stat. 2566) is amended—

(1) in paragraph (1), by striking "Reservation" and inserting "Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation";

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6),

October 31, 1994

MNI WICONI ACT AMENDMENTS

4027

respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) the lack of water supplies on the Rosebud Reservation and Lower Brule Reservation restrict efforts to promote economic development on those reservations;"

(3) in paragraph (5), as redesignated by paragraph (2) of this subsection, by striking "Reservation;" and inserting "Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation;" and

(4) in paragraph (6), as redesignated by paragraph (2) of this subsection, by inserting "Rosebud Indian Reservation and Lower Brule Indian Reservation," after "Reservation,".

**(b) [Purpose.]**—Subsection (b) of section 2 (102 Stat. 2566) is amended by inserting ", Rosebud Indian Reservation, and Lower Brule Indian Reservation" after "Reservation" each place it appears.

**Sec. 804. [Oglala Sioux Rural Water Supply System.]—(a) [Authorization.]**—Subsection (a) of section 3 (102 Stat. 2567) is amended—

(1) in the matter preceding paragraph (1), by striking "1988." and inserting "1988, and as more specifically described in the Final Engineering Report dated May, 1993."; and

(2) by amending paragraph (3) to read as follows:

"(3) facilities to allow for interconnections with the West River Rural Water System, Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System, and Lower Brule Sioux Rural Water System;"

**(b) [Construction requirements.]**—Subsection (d) of such section (102 Stat. 2568) is amended—

(1) by striking "West River Rural Water System, and the Lyman-Jones Rural Water System,"; and by inserting "West River Rural Water System, the Lyman-Jones Rural Water System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System,"; and

(2) by striking "three systems" and inserting "five systems authorized under this Act".

**(c) [Title to system.]**—Subsection (e) of such section (102 Stat. 2568) is amended by inserting "or encumbered" after "transferred".

**Sec. 805. [West River Rural Water System and Lyman-Jones Rural Water System.]**—Section 4(a) of the Act (102 Stat. 2568) is amended—

(1) in paragraph (2), by striking out "65 per centum" and inserting in lieu thereof "80 percent"; and

(2) in paragraph (3), by striking out "35 per centum" and inserting in lieu thereof "20 percent". (108 Stat. 4540)

**Sec. 806. [Rosebud Sioux Rural Water System and Lower Brule Sioux Rural Water System.]**—The Act is amended by inserting after section 3 the following: "Sec. 3A. [Rosebud Sioux Rural Water System.]—

"(a) [Authorization.]—The Secretary is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural and industrial water system, to be known as the Rosebud Sioux Rural Water System, as generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May, 1993. The Rosebud Sioux Rural Water system shall consist of—

"(1) necessary pumping and treatment facilities;

"(2) pipelines extending from the points of interconnections with the Oglala Sioux Rural Water System to the Rosebud Indian Reservation;

"(3) facilities to allow for interconnections with the Lyman Jones Rural Water Supply System;

"(4) distribution and treatment facilities to serve the needs of the Rosebud Indian Reservation, and other areas described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, including (but not limited to) the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents of the Rosebud Indian Reservation;

"(5) appurtenant buildings and property rights;

"(6) necessary property and property rights;

"(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

"(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary and appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Rosebud Sioux Tribe and reservation villages, towns, and municipalities.

"(b) [Agreement with non-Federal entity to plan, design, construct, operate and maintain the Rosebud Sioux Rural Water Supply System.]—

"(1) In carrying out subsection (a), the Secretary, with the concurrence of the Rosebud Sioux Tribal Council, shall enter into cooperative agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Rosebud Sioux Rural Water System.

"(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—"(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

"(B) the procedures and requirements for approval and acceptance of such design and construction; and

"(C) the rights, responsibilities, and liabilities of each party to the agreement.

October 31, 1994

MNI WICONI ACT AMENDMENTS

4029

"(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Rosebud Indian Reservation.

"(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Rosebud Sioux Tribe.

"(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10(a) for the Rosebud Sioux Rural Water System.

"(c) [Service area.]—The service area of the Rosebud Sioux Rural Water System shall extend to all of Todd County, South Dakota, and to all other territory and lands generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993 and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May 1993.

"(d) [Construction requirements.]—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Rosebud Sioux Rural Water System shall be planned and constructed to a size sufficient to meet the municipal, rural and industrial water supply requirements of the Rosebud Sioux Tribe and the Lyman-Jones Rural Water System, as generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May, 1993, taking into account the effects of the conservation plans described in section 5. The Rosebud Rural Water System and Lyman-Jones Rural Water System may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Rosebud Sioux Rural Water System.

"(e) [Title to system.]—Title to the Rosebud Sioux Rural Water System shall be held in trust for the Rosebud Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

"(f) [Technical assistance.]—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Rosebud Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Rosebud Sioux Rural Water System, including (but not limited to) operation and management training.

"(g) [Application of the Indian Self-Determination Act.]—Planning, design, construction, and operation of the Rosebud Sioux Rural Water System shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638, 25 U.S.C. § 450)". (108 Stat. 4540)

"Sec. 3B. [Lower Brule Sioux Rural Water System.]—

October 31, 1994

4030

MNI WICONI ACT AMENDMENTS

"(a) [Authorization.]—The Secretary is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Lower Brule Sioux Rural Water System, as generally described in the Final Engineering Report for the Mni Wiconi Rural Water Supply Project, dated May 1993. The Lower Brule Sioux Rural Water System shall consist of—

"(1) necessary pumping and treatment facilities;

"(2) pipelines extending from the points of interconnections with the Oglala Sioux Rural Water Supply System to the Lower Brule Indian Reservation;

"(3) facilities to allow for interconnections with the Lyman-Jones Rural Water Supply System;

"(4) distribution and treatment facilities to serve the needs of the Lower Brule Indian Reservation, including (but not limited to) the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents of the Lower Brule Indian Reservation;

"(5) appurtenant buildings and property rights;

"(6) necessary property and property rights;

"(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

"(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary and appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Lower Brule Sioux Tribe and reservation villages, towns and municipalities.

"(b) [Agreement with non-Federal entity to plan, design, construct, operate and maintain the Lower Brule Sioux Rural Water Supply System.]

"(1) In carrying out subsection (a), the Secretary, with the concurrence of the Lower Brule Sioux Tribal Council, shall enter into cooperative agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Lower Brule Sioux Rural Water System.

"(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

"(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design, construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

"(B) the procedures and requirements for approval and acceptance of such design and construction; and

"(C) the rights, responsibilities, and liabilities of each party to the agreement.

"(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Lower Brule Indian Reservation.

October 31, 1994

MNI WICONI ACT AMENDMENTS

4031

"(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Lower Brule Sioux Tribe.

"(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10(a) for the Lower Brule Sioux Rural Water System.

"(c) [Service area.]—The service area of the Lower Brule Sioux Rural Water System shall be the boundaries of the Lower Brule Indian Reservation.

"(d) [Construction requirements.]—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Lower Brule Sioux Rural Water System shall be planned and constructed to a size sufficient to meet the municipal, rural, and industrial water supply requirements of the Lower Brule Sioux Tribe and the Lyman-Jones Rural Water System, as generally described in the Final Engineering Report of the Mni Wiconi Rural Water Supply Project, dated May 1993, taking into account the effects of the conservation plans described in section 5. The Lower Brule Sioux Rural Water System and Lyman-Jones Rural Water System may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Lower Brule Sioux Rural Water System.

"(e) [Title to System.]—Title to the Lower Brule Sioux Rural Water System shall be held in trust for the Lower Brule Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

"(f) [Technical assistance.]—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Lower Brule Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Lower Brule Sioux Rural Water System, including (but not limited to) operation and management training.

"(g) [Application of the Indian Self-Determination Act. ]—Planning, design, construction, and operation of the Lower Brule Sioux Rural Water System shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638, 25 U.S.C. § 450)". (108 Stat. 4542)

**Sec. 807. [West River Rural Water System and Lyman-Jones Rural Water System.]—(a) [Service area.]—**Subsection (d) of section 4 (102 Stat. 2569) is amended by striking the period at the end thereof and inserting ", and Final Engineering Report dated May 1993."

**(b) [Interconnection of facilities and waiver of charges.]—**Section 4 of the Act (102 Stat. 2568) is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

"(f) [Interconnection of facilities and waiver of charges.]—The Secretary is authorized to interconnect the Lyman-Jones Rural Water System, and the West River Rural Water System, with each of the other systems authorized under this Act, and to provide for the delivery of water to the West River Rural Water System, and Lyman-Jones Rural Water System, without charge or cost, from the Missouri River and through common facilities of the Oglala Sioux Rural Water Supply System, Rosebud Rural Water System and Lower Brule Rural Water System." (108 Stat. 4543)

**Sec. 808. [Water conservation.]**—Section 5 of the Act (102 Stat. 2570) is amended by striking "The non-Federal parties (including the Oglala Sioux Tribe)" and inserting "Each non-Federal party (including the Oglala Sioux Tribe, Rosebud Sioux Tribe, and Lower Brule Sioux Tribe)". (108 Stat. 4544)

**Sec. 809. [Mitigation of fish and wildlife losses.]**—Section 6 of the Act (102 Stat. 2570) is amended—(1) in subsection (a)—

(A) by inserting ", Rosebud Sioux Rural Water Supply System, Lower Brule Sioux Rural Water Supply System," after "Supply System"; and

(B) by inserting "Rosebud Sioux Rural Water Supply System, Lower Brule Sioux Rural Water Supply System," after "Supply System,"; and

(2) in subsection (b)—

(A) by inserting ", all Indian tribes residing on reservations within the State of South Dakota," after "South Dakota";

(B) by inserting "and terrestrial" after "wildlife";

(C) by striking "Such plans" and inserting "Such recommendations"; and

(D) by adding at the end the following: "The Indian tribes shall be afforded an opportunity to review and concur within any recommendations affecting their reservations before they are submitted to Congress."

**Sec. 810. [Prohibition of use of funds for irrigation purposes.]**—Section 7 of the Act (102 Stat. 2570) is amended by striking "Supply System," and inserting "Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Rural Water Supply System,".

**Sec. 811. [Rule of construction.]**—Section 8 of the Act (102 Stat. 2570) is amended—

(1) by inserting ", Rosebud Sioux Tribe, and Lower Brule Sioux Tribe" after "Tribe"; and

(2) by striking "or construct" and inserting "construct, maintain, or replace".

**Sec. 812. [Use of Pick-Sloan power.]—(a) [In general.]**—Subsection (a) of section 9 (102 Stat. 2570) is amended by striking "sections 3" and inserting "sections 3, 3A, 3B,".

**(b) [Definitions.]**—Subsection (e)(1) of section 9 (102 Stat. 2571) is amended by striking "Supply System," and inserting "Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System,".

October 31, 1994

MNI WICONI ACT AMENDMENTS

4033

**Sec. 813. [Authorization of appropriations.]**—Section 10 of the Act (102 Stat. 2571) is amended to read as follows: "Sec. 10. [Authorization of appropriations.]—

"(a) [Planning, design, and construction.]—There are authorized to be appropriated \$263,241,000 for the planning, design, and construction of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System, the West River Rural Water Supply System, and the Lyman-Jones Rural Water Supply System described in sections 3, 3A, 3B, and 4. Such funds are authorized to be appropriated only through the end of the year 2003. The funds authorized to be appropriated by the first sentence of this section, less any amounts previously obligated for the Systems, may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after October 1, 1992, as indicated by engineering costs indices applicable for the type of construction involved.

"(b) [Operation and maintenance of Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System and Lower Brule Sioux Rural Water Supply System.]—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of the Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System and Lower Brule Sioux Rural Water Supply System. The operation and maintenance expenses associated with water deliveries to the West River and Lyman-Jones Rural Water Systems are a non-Federal responsibility and for such deliveries the Secretary shall enter into a contract with the West River and Lyman-Jones Systems for the payment of an annual operation and maintenance fee. Such fee shall be based on the incremental operation and maintenance costs for water actually delivered each year to the West River and Lyman-Jones Rural Water Systems. Such operation and maintenance payments shall be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations as indicated by indices applicable to comparable regional rural water supply systems for the type of operation and maintenance involved.

"(c) [Waste Water Disposal Systems Feasibility Studies.]—There is authorized to be appropriated such sums as may be necessary to complete the feasibility studies authorized by section 15(c)."

**Sec. 814. [Water rights.]**—Paragraph (5) of section 11 (102 Stat. 2571) is amended—

- (1) by inserting "rights, benefits, privileges or claims, including" after "affect any";
- (2) by inserting "Rosebud Sioux Tribe and Lower Brule Sioux Tribe," after "Tribe," the first place it appears;
- (3) by striking "the Pine Ridge Indian Reservation" and inserting "their respective reservations"; and

October 31, 1994

4034 BELLE FOURCHE IRRIGATION PROJECT

(4) by striking "Tribe," the second place it appears and inserting "Tribe, Rosebud Sioux Tribe, Lower Brule Sioux Tribe,". (108 STAT. 4545)

**Sec. 815. [Feasibility studies.]—(a) [Alternate uses.]**—Section 3 of Public Law 97-273 (96 Stat. 1181), as amended by section 12(b) of Public Law 100-516 (102 Stat. 2572), is amended by striking "Dakota," and inserting "Dakota and all Indian tribes residing on reservations within the State of South Dakota,".

EXPLANATORY NOTE

**Reference in the Text.** The Act of September 30, 1982 (Public Law 97-273, 96 Stat. 1181) referenced in section 815 above appears in Volume IV at page 3327. Section 3 of the 1982 Act appears as amended in Supplement II at page S1087. The Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2566) appears in Volume V at page 3593.

**(b) [Waste water disposal systems.]**—Section 12 of the Act (102 Stat. 2572) is amended by adding at the end the following:

"(c) [Waste water disposal systems.]—(1) The Secretary is authorized and directed, in consultation with the Oglala Sioux Tribe, Rosebud Sioux Tribe and Lower Brule Sioux Tribe, to conduct feasibility studies on the need to develop waste water disposal facilities and systems, and rehabilitate existing waste water disposal facilities and systems, on the Pine Ridge Indian Reservation, Rosebud Indian Reservation and Lower Brule Indian Reservation, and to report to the Congress the findings of such studies along with his recommendations.

"(2) The feasibility studies authorized under this subsection shall be completed and presented to Congress within one year after the date that funds are first made available by the Secretary to complete the studies." (108 Stat. 4546)

TITLE IX—BELLE FOURCHE IRRIGATION PROJECT

**Sec. 901. [Expansion of Belle Fourche Irrigation Project.]**—

**(a) [Authorization of additional activities.]**—The Act entitled "An Act to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes." (Public Law 98-157, 97 Stat. 989) is amended in the first section—

(1) by striking "That the general" and inserting in lieu thereof, so as to appear immediately after and below the enacting clause, the following: "Section 1.

(a) The general plan for"; and

(2) by adding at the end the following: "(b)(1) In addition to the activities authorized under subsection (a), the general plan for the Belle Fourche project is modified to include the following:

"(A) Rehabilitation of the following major water control structures:

"(i) The Whitewood Siphon.

October 31, 1994

BELLE FOURCHE IRRIGATION PROJECT

4035

"(ii) 2 Belle Fourche dam outlets.

"(B) Lining at South Canal and rehabilitation of Johnson Lateral for water conservation.

"(C) Replacement or rehabilitation of deteriorated canal bridges.

"(D) Provision of minor lateral rehabilitation and contract support work by the Belle Fourche irrigation district.

"(E) Conduct of a detailed study of project-wide water use management and implementation of improved management practices for the purpose of achieving optimal conservation of water supplies.

"(2) The Federal share of the cost of activities under this subsection may not exceed \$10,500,000. The State share of those costs may not exceed \$4,000,000, and shall be paid concurrently with Federal expenditures for activities under this subsection."

EXPLANATORY NOTE

**Reference in the Text.** The Act of Stat. 989) referenced in section 1 above appears November 17, 1983 (Public Law 98-157, 97 in Volume V at page 3376.

**(b) [Extension of repayment period.]**—Section 2(b) of that Act (97 Stat. 989) is amended by striking "the year in which such amendatory repayment contract is executed" and inserting "July 1, 1995".

**(c) [Applicable rates of charge and assessable acreage.]**—Section 2(c) of that Act is amended to read as follows:

"(c)(1) Before July 1, 1995, the rates of charge to land class in the unit shall continue to be as established in the November 29, 1949, repayment contract with the district, as subsequently amended and supplemented. On and after July 1, 1995, such rates of charge and assessable acreage shall, subject to subsection (d), be in accordance with the amortization capacity and classification of unit lands as then determined by the Secretary.

"(2) After final completion of the rehabilitation and betterment program authorized by this Act, and at intervals agreed to by the Secretary and the Belle Fourche irrigation district, the rates of charge and assessable acreage may be amended as determined necessary by the Secretary."

**(d) [Authorization of appropriation.]**—Section 7 of that Act (97 Stat. 990) is amended (1) by inserting "(a)" after "Sec. 7."; and (2) by adding at the end the following: "(b) In addition to amounts authorized under subsection (a), for activities under section 1(b) there are authorized to be appropriated \$10,500,000, plus or minus such amounts (if any) as may be justified by reason of ordinary fluctuations in construction cost indexes applicable to types of construction conducted under that section."

October 31, 1994

4036 STAGECOACH RESERVOIR PROJECT ACT OF 1994

**(e) [Amendment of contract.]**—The Secretary of the Interior and the Belle Fourche irrigation district shall amend the contract numbered 5-07-60-WR170 to reflect the amendments made by this section. (108 Stat. 4546)

TITLE X—UPPER YAMPA WATER CONSERVANCY PROJECT

**Sec. 1001. [Short title.]**—This title may be cited as the "Stagecoach Reservoir Project Act of 1994". (108 Stat. 4547)

**Sec. 1002. [Sale of the Stagecoach Reservoir Project loan.]**—

**(a) [Agreement.]—(1) [In general.]**—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall conduct appropriate investigations regarding, and is authorized to sell, or accept prepayment on, the loan contract described in paragraph (2) to the Upper Yampa Water Conservancy District in Colorado (referred to in this title as the "District") for the Stagecoach Reservoir Project.

**(2) [Loan contract.]**—The loan contract described in paragraph (1) is numbered 7-07-40-RO480 and was entered into pursuant to the Small Reclamation Projects Act of 1956 (43 U.S.C. § 422a et seq.).

EXPLANATORY NOTE

**Reference in the Text.** The Small Reclamation Projects Act of 1956, Act of August 6, 1956 (ch. 972, 70 Stat. 1044) referenced above appears in Volume II at page 1331. Amendments appear in Volume IV at pages 2641, 2932, 3203, 3345, S268-S278, and in Supplement II at page 5875.

**(b) [Payment.]**—Any agreement negotiated pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining payments due on the loans by the interest rate determined pursuant to subsection (c).

**(c) [Interest rate.]—(1) [In general.]**—The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

**(2) [Determination.]**—In determining the interest rate, the Secretary (A) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party; and (B) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

**(3) [Adjustment.]**—If the borrower or purchaser of the loan has access to tax-exempt financing, including tax-exempt bonds, tax-exempt cash reserves, and cash and loans of any kind from any tax-exempt entity, to finance the

October 31, 1994

MANCOS PROJECT PRIVATE POWER DEVELOPMENT 4037

transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

**(4) [Limitation.]**—Notwithstanding any other provision of law, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

**(5) [Approval.]**—The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any loan sale or prepayment made pursuant to this title. (108 Stat. 4547)

**Sec. 1003. [Termination and conveyance of rights.]**—Upon receipt of the payment specified in section 1002(b)—

(1) the obligation of the District under the loan contract described in section 1002(a)(2) shall terminate;

(2) the Secretary of the Interior shall convey all right and interest of the United States in the Stagecoach Reservoir Project to the District; and

(3) the District shall absolve the United States, and its officers and agents, of any liability associated with the Stagecoach Reservoir Project. (108 Stat. 4548)

**Sec. 1004. [Termination of authority.]—(a) [In general.]**—Subject to subsection (b), the authority granted by this title to sell loans shall terminate 2 years after the date of enactment of this Act.

**(b) [Time to respond to offer.]**—The borrower shall have not less than 60 days to respond to any prepayment offer made by the Secretary. (108 Stat. 4548, Title X not codified.)

TITLE XI—MANCOS PROJECT

**Sec. 1101. [Short title.]**—This title may be cited as the "Mancos Project Private Power Development Authorization Act of 1994".

**Sec. 1102. [Findings.]**—Congress finds that—(a) development of hydroelectric power at the Mancos Project consistent with the Feasibility Report and Engineering and Construction Report for the Jackson Gulch Reservoir Hydroelectric Project dated April 19, 1991, and revised on May 13, 1992, and February 10, 1993, by the Mancos Water Conservancy District—(1) will be without cost to the United States;

(2) will not impair the efficiency of the project for irrigation purposes;

(3) will not alter the volume, timing or temperatures of flows from the reservoir; and

(4) is not likely to cause any new or increased adverse impacts to any federally listed or candidate species;

October 31, 1994

4038 MANCOS PROJECT PRIVATE POWER DEVELOPMENT

(b) that the Mancos Water Conservancy District is currently operating and maintaining facilities at the Mancos Project and that the development of hydroelectric power at the Mancos Project consistent with the Feasibility Report and Engineering and Construction Report for the Jackson Gulch Reservoir Hydroelectric Project dated April 19, 1991, revised on May 13, 1992, and February 10, 1993, by the Mancos Water Conservancy District will not increase operation and maintenance costs of the Federal Government; and

(c) that any lease of power privileges issued by the Secretary pursuant to this title does not constitute a "contract" under section 202(1) of Public Law 97-293 (96 Stat. 1261; 43 U.S.C. § 390bb) and that nothing in this title is intended to make applicable any section of Public Law 97-293 (96 Stat. 1261; 43 U.S.C. § 390aa et. seq.) that would not previously apply. (108 Stat. 4549)

EXPLANATORY NOTE

**Reference in the Text.** The Act of October 12, 1982 (Public Law 97-293, 96 Stat. 1263) currently amended in Supplement II at page S1092. appears in Volume IV at page 3334 and as it is

**Sec. 1103. [Authorization to lease power privileges.]**—Notwithstanding the provisions of the Water Conservation and Utilization Act (16 U.S.C. §§ 590y-590z-11) or any relevant provision of the repayment contract Ilr-384, dated July 20, 1942, as amended December 22, 1947, the Secretary is authorized to enter into a lease of power privileges at the Mancos Project, Colorado, with the Mancos Water Conservancy District.

EXPLANATORY NOTE

**Reference in the Text.** The Water Conservation and Utilization Act, Act of August 11, 1939 (ch. 717, 53 Stat. 1418) referenced in section 1103 appears in Volume I at page 668.

**Sec. 1104. [Lease conditions.]**—Any such lease of power privileges issued pursuant to section 1103 of this title shall not exceed a period of forty years and shall be consistent with rates charged by the Federal Energy Regulatory Commission for comparable sized projects. Moneys derived from such lease shall be covered into the reclamation fund in accordance with relevant parts of Federal reclamation law, the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. § 371). (108 Stat. 4549)

**Sec. 1105. [Revenues derived from power development.]**—Notwithstanding the provisions of the Water Conservation and Utilization Act (16 U.S.C. §§ 590y-590z-11) or any relevant provision of the repayment contract Ilr-384, dated July 20, 1942, as amended December 22, 1947, the Mancos Water

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4039

Conservancy District may receive revenues from the sale of the power generated pursuant to such lease of power privilege. (108 Stat. 4550, Title XI not codified.)

TITLE XII—YAKIMA RIVER BASIN WATER  
ENHANCEMENT PROJECT

**Sec. 1201. [Purposes.]**—The purposes of this title are—(1) to protect, mitigate, and enhance fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation and enhancement of wetlands; and by other appropriate means of habitat improvement;

(2) to improve the reliability of water supply for irrigation;

(3) to authorize a Yakima River basin water conservation program that will improve the efficiency of water delivery and use; enhance basin water supplies; improve water quality; protect, create and enhance wetlands; and determine the amount of basin water needs that can be met by water conservation measures;

(4) to realize sufficient water savings from the Yakima River Basin Water Conservation Program so that not less than 40,000 acre-feet of water savings per year are achieved by the end of the fourth year of the Basin Conservation Program, and not less than 110,000 acre-feet of water savings per year are achieved by the end of the eighth year of the program, to protect and enhance fish and wildlife resources; and not less than 55,000 acre feet of water savings per year are achieved by the end of the eighth year of the program for availability for irrigation;

(5) to encourage voluntary transactions among public and private entities which result in the implementation of water conservation measures, practices, and facilities; and

(6) to provide for the implementation by the Yakama Indian Nation at its sole discretion of (A) an irrigation demonstration project on the Yakama Indian Reservation using water savings from system improvements to the Wapato Irrigation Project, and (B) a Toppenish Creek corridor enhancement project integrating agricultural, fish, wildlife, and cultural resources. (108 Stat. 4550, Title XII not codified.)

**Sec. 1202. [Definitions.]**—As used in this title: (1) The term "Basin Conservation Plan" means a plan for implementing water conservation measures found in the various water conservation plans developed under the Basin Conservation Program.

(2) The term "Basin Conservation Program" means the Yakima River Basin Water Conservation Program established under section 1203(a).

(3) The term "comprehensive basin operating plan" means a plan that will provide guidance to the Yakima Project Superintendent for operation of the existing Yakima Project as modified by actions taken pursuant to this title.

October 31, 1994

4040 YAKIMA RIVER BASIN WATER ENHANCEMENT

(4) The term "Conservation Advisory Group" means the Yakima River Basin Conservation Advisory Group established under section 1203(c).

(5) The term "conserved water" means water saved and attributable to the program established under the Basin Conservation Program.

(6) The term "Irrigation Demonstration Project" means the Yakama Indian Reservation Irrigation Demonstration Project authorized in section 1204(b).

(7) The term "nonproratable water" means that portion of the total water supply available under provisions of sections 18 and 19 of Civil Action No. 21 (Federal District Court Judgment of January 31, 1945) that is not subject to proration in times of water shortage.

(8) The term "on-district storage" means small water storage facilities located within the boundaries of an irrigation entity, including reregulating reservoirs, holding ponds, or other new storage methods which allow for efficient water use.

(9) The term "proratable water" means that portion of the total water supply available under provisions of sections 18 and 19 of Civil Action No. 21 (Federal District Court Judgment of January 31, 1945) that is subject to proration in times of water shortage.

(10) The term "Secretary" means the Secretary of the Interior.

(11) The term "System Operations Advisory Committee" means a group of fishery biologists—

(A) created by the Yakima Project Superintendent in response to the supplemental instructions entitled "Supplementary Instructions to the Water Master", and dated November 28, 1980, in the case of *Kittitass Reclamation District, et al. vs. the Sunnyside Valley Irrigation District, et al.* (E.D. Wash., Civil No. 21.);

(B) who advise the Yakima Project Superintendent on operations of the Yakima Project for fish and wildlife purposes; and

(C) who, together with others, were identified for consultation on November 29, 1990, in the amended partial summary judgment entered in the basin adjudication (Yakima County Superior Court No. 77-2-01484-5).

(12) The term "Toppenish Enhancement Project" means the Toppenish Creek corridor enhancement project authorized by section 1204(c).

(13) The term "Takama Indian Nation" means the Confederated Tribes and Bands of the Yakama Indian Nation as redesignated under section 1204(g).

(14) The term "Yakima Project Superintendent" means the individual designated by the Regional Director, Pacific Northwest Region, Bureau of Reclamation, to be responsible for the operation and management of the Yakima Federal Reclamation Project, Washington. (108 Stat. 4550)

**Sec. 1203. [Yakima River Basin Water Conservation Program.]—**

**(a) [Establishment.]—**(1) The Secretary, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River basin irrigators, and other interested parties, shall establish and administer a Yakima River Basin

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4041

Water Conservation Program for the purpose of evaluating and implementing measures to improve the availability of water supplies for irrigation and the protection and enhancement of fish and wildlife resources, including wetlands, while improving the quality of water in the Yakima Basin. The Secretary may make grants to eligible entities for the purposes of carrying out this title under such terms and conditions as the Secretary may require. Such terms and conditions shall include a requirement that all water districts, irrigation districts, individuals, or other entities eligible to participate in the Basin Conservation Program must equip all surface water delivery systems within their boundaries with volumetric water meters or equally effective water measuring methods within 5 years of the date of enactment of this Act.

(2) Conserved water resulting in whole or in part from the expenditure of Federal funds shall not be used to expand irrigation in the Yakima Basin, except as specifically provided in section 1204(a)(3) on the Yakama Indian Reservation.

(3) The provisions of this section shall not apply to the Yakama Indian Nation except as to any funds specifically applied for from the Basin Conservation Program. (108 Stat. 4551)

**(b) [Four phases of program.]**—The Basin Conservation Program shall encourage and provide funding assistance for four phases of water conservation, which shall consist of the following:

(1) The development of water conservation plans, consistent with applicable water conservation guidelines of the Secretary, by irrigation districts, conservation districts, water purveyors, other areawide entities, and individuals not included within an areawide entity.

(2) The investigation of the feasibility of specific potential water conservation measures identified in conservation plans.

(3) The implementation of measures that have been identified in conservation plans and have been determined to be feasible.

(4) Post implementation monitoring and evaluation of implemented measures.

**(c) [Conservation Advisory Group.]**—(1) Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River basin irrigators, and other interested and related parties, shall establish the Yakima River Basin Conservation Advisory Group.

(2) Members of the Conservation Advisory Group shall be appointed by the Secretary and shall be comprised of—

- (A) one representative of the Yakima River basin nonproratable irrigators,
- (B) one representative of the Yakima River basin proratable irrigators,
- (C) one representative of the Yakama Indian Nation,
- (D) one representative of environmental interests,

October 31, 1994

4042 YAKIMA RIVER BASIN WATER ENHANCEMENT

(E) one representative of the Washington State University Agricultural Extension Service,

(F) one representative of the Department of Wildlife of the State of Washington, and

(G) one individual who shall serve as the facilitator.

(3) The Conservation Advisory Group shall—(A) provide recommendations to the Secretary and to the State of Washington regarding the structure and implementation of the Basin Conservation Program,

(B) provide recommendations to the Secretary and to the State of Washington regarding the establishment of a permanent program for the measurement and reporting of all natural flow and contract diversions within the basin,

(C) structure a process to prepare a basin conservation plan as specified in subsection (f),

(D) provide annual review of the implementation of the applicable water conservation guidelines of the Secretary, and

(E) provide recommendations consistent with statutes of the State of Washington on rules, regulations, and administration of a process to facilitate the voluntary sale or lease of water.

(4) The facilitator shall arrange for meetings of the Conservation Advisory Group, provide logistical support, and serve as moderator for the meetings.

(5) The Conservation Advisory Group shall consult an irrigation district when considering actions specifically affecting that district. For the purposes of this paragraph, an irrigation district includes the Yakima Reservation Irrigation District.

(6) The Conservation Advisory Group shall be nonvoting, seeking consensus whenever possible. If disagreement occurs, any member may submit independent comments to the Secretary. The Conservation Advisory Group shall terminate 5 years after the date of its establishment unless extended by the Secretary.

**(d) [Cost sharing.]**—(1) Except as otherwise provided by this title, costs incurred in the four phases of the Basin Conservation Program shall be shared as follows:

Program Phase	Non-Federal		Federal Grant
	State Grant	Local	
1. Development of water conservation plans	50% but not more than \$200,000 per recipient	(Residual amount if any)	50%

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4043

2. Investigation of specific water conservation measures	50% but sum of 1 and 2 not greater than \$200,000 per recipient	20% after deducting State funds for Item 2	Residual amount after deducting State and local funds for Item 2
3 and 4. Implementation and post implementation monitoring and evaluation	17.5%	17.5%	65.0%

(2) The Yakima River Basin Water Enhancement Project is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Yakima River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1989 [sic] (94 Stat. 2697) and independent water-related improvements of the State of Washington and other public and private entities to improve irrigation water use, water supply, and water quality, shall be treated as non-Federal cost share expenditures and shall be consolidated in any final calculation of required cost sharing. Within one year of the date of enactment of this Act, the Secretary shall enter into a binding cost sharing agreement with the State of Washington. The agreement shall describe the terms and conditions of specific contributions and other activities that may, subject to approval by the Secretary, qualify as non-Federal cost share expenditures. (108 Stat. 4551)

EXPLANATORY NOTE

**Reference in the Text.** The Pacific Northwest Power Planning and Conservation Act, Act of December 5, 1980 (Public Law 96-501, 94 Stat. 2697) referenced in section 1203(d)(2) above appears in Volume IV at page 3225.

(3) Costs of the Basin Conservation Program related to projects on the Yakama Indian Reservation are a Federal responsibility and shall be nonreimbursable and not subject to the cost-sharing provisions of this subsection.

**(e) [Entity water conservation plans.]**—To participate in the Conservation Basin Program an entity must submit a proposed water conservation plan to the Secretary. The Secretary shall approve a water conservation plan submitted

4044 YAKIMA RIVER BASIN WATER ENHANCEMENT

under this subsection if the Secretary determines that the plan meets the applicable water conservation guidelines of the Secretary.

**(f) [Basin conservation plan.]**—The Conservation Advisory Group shall, within 2 ½ years after the date of enactment of this Act, submit a draft basin conservation plan to the Secretary.

**(g) [Public comment.]**—The Secretary shall distribute the draft basin conservation plan and the entity water conservation plans submitted under Subsections (e) and (f), respectively, for public comment for a 60-day period.

**(h) [Publication of basin conservation plan.]**—Within 60 days after the close of the comment period under subsection (g), the Secretary shall publish the Basin Conservation Plan which will provide the basis—

- (1) for prioritizing and allocating funds to implement conservation measures under this title; and
- (2) for preparing an interim comprehensive basin operating plan under section 1210 of this title as provided for in Public Law 96-162 (93 Stat. 1241).

EXPLANATORY NOTE

**Reference in the Text.** The Act of 1241) referenced in section 1203(h)(2) above December 28, 1979 (Public Law 96-162, 93 Stat. 1241) appears in Volume IV at page 3180.

**(i) [Conservation measures.]**—(1) Measures considered for implementation in the Basin Conservation Program may include, among others, conveyance and distribution system monitoring, automation of water conveyance systems, water measuring or metering devices and equipment, lining and piping of water conveyance and distribution systems, on-district storage, electrification of hydraulic turbines, tail-water recycling, consolidation of irrigation systems, irrigation scheduling, and improvement of on-farm water application systems. Basin Conservation Program funds may also be used throughout all four phases of the Basin Conservation Program to mitigate for adverse impacts of program measures.

(2) In addition to implementing existing technologies, the Secretary shall encourage the testing of innovative water conservation measures. The Secretary shall, to the maximum extent possible under applicable Federal, State, and tribal law, cooperate with the State of Washington to facilitate water and water right transfers, water banking, dry year options, the sale and leasing of water, and other innovative allocation tools used to maximize the utility of existing Yakima River basin water supplies.

(3) The Secretary may, consistent with applicable law, use funds appropriated to carry out this section for the purchase or lease of land, water, or water rights from any entity or individual willing to limit or forego water use on a temporary or permanent basis. Funds used for purchase or lease under this paragraph are not subject to the cost sharing provisions of subsection (d).

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4045

Efforts to acquire water should be made immediately upon availability of funds to meet the three-year goal specified in section 1205(a)(4) to provide water to be used by the Yakima Project Superintendent under the advisement of the System Operations Advisory Committee for instream flow purposes. The use of Basin Conservation Program funds under this paragraph are in addition to those specifically authorized to be appropriated by subsection (j)(4).

(4) On-farm water management improvements shall be coordinated with programs administered by the Secretary of Agriculture and State conservation districts.

**(j) [Authorization of appropriations.]**—There is hereby authorized to be appropriated to the Secretary, at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, the following amounts for the Basin Conservation Program: (1) \$1,000,000 for the development of water conservation plans.

(2) \$4,000,000 for investigation of specific potential water conservation measures identified in conservation plans for consideration for implementing through the Basin Conservation Program.

(3) Up to \$67,500,000 for design, implementation, post implementation monitoring and evaluation of measures, and addressing environmental impacts.

(4) Up to \$10,000,000 for the initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods to facilitate the outward migration of anadromous fish flushing flows. Such funds shall not be subject to the cost sharing provisions of subsection (d).

(5) \$100,000 annually for the establishment and support of the Conservation Advisory Group during its duration. Such funds shall be available for travel and per diem, rental of meeting rooms, typing, printing and mailing, and associated administrative needs. The Secretary and the State of Washington shall provide appropriate staff support to the Conservation Advisory Group. (108 Stat. 4551)

**Sec. 1204. [Yakama Indian Nation.]—(a) [Wapato Irrigation Project improvements and appropriations.]—**

(1) The Yakama Indian Nation's proposed system improvements to the Wapato Irrigation Project, as well as the design, construction, operation, and maintenance of the Irrigation Demonstration Project and the Toppenish Creek corridor enhancement project, pursuant to this title shall be coordinated with the Bureau of Indian Affairs.

(2) There is authorized to be appropriated to the Secretary not more than \$23,000,000 for the preparation of plans, investigation of measures, and following the Secretary's certification that such measures are consistent with the water conservation objectives of this title, the implementation of system improvements to the Wapato Irrigation Project. Funding for further

October 31, 1994

4046 YAKIMA RIVER BASIN WATER ENHANCEMENT

improvements within the Wapato Irrigation Project may be acquired under the Basin Conservation Program or other sources identified by the Yakama Indian Nation.

(3) Water savings resulting from irrigation system improvements shall be available for the use of the Yakama Indian Nation for irrigation and other purposes on the reservation and for protection and enhancement of fish and wildlife within the Yakima River basin. The conveyance of such water through irrigation facilities other than the Wapato Irrigation Project shall be on a voluntary basis and shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration. (108 Stat. 4555)

**(b) [Irrigation Demonstration Project appropriations.]**—(1)(A) There is hereby authorized to be appropriated to the Secretary—

(i) at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, \$8,500,000 for the design and construction of the Yakama Indian Reservation Irrigation Demonstration Project; and

(ii) such sums as may be necessary for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies for the period specified by the Secretary, which sums are in addition to operation and maintenance funds for wildlife and cultural purposes appropriated to the Secretary under other authorization.

(B) Funds may not be made available under this subsection until the Yakama Indian Nation obtains the concurrence of the Secretary in the construction, management, and administrative aspects of the Irrigation Demonstration Project.

(C) After the end of the period specified under subparagraph (A)(ii), costs for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies referred to in that subparagraph, shall be borne exclusively by the lands directly benefitting from the Irrigation Demonstration Project.

(2) The Irrigation Demonstration Project shall provide for the construction of distribution and on-farm irrigation facilities to use all or a portion of the water savings, as determined by the Yakama Indian Nation, resulting from the Wapato Irrigation Project system improvements for—

(A) demonstrating cost-effective state of the art irrigation water management and conservation,

(B) the training of tribal members in irrigation methods, operation, and management, and

(C) upgrading existing hydroelectric facilities and construction of additional hydroelectric facilities on the reservation to meet irrigation pumping power needs. (108 Stat. 4555)

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4047

**(c) [Toppenish Creek Corridor Enhancement Project appropriations.]**—There is hereby authorized to be appropriated to the Secretary \$1,500,000 for the further investigation by the Yakama Indian Nation of measures to develop a Toppenish Creek corridor enhancement project to demonstrate integration of management of agricultural, fish, wildlife, and cultural resources to meet tribal objectives and such amount as the Secretary subsequently determines is necessary for implementation. There is also authorized to be appropriated to the Secretary such sums as may be necessary for the operation and maintenance of the Toppenish Enhancement Project.

**(d) [Report.]**—Within 5 years of the implementation of the Irrigation Demonstration Project and the Toppenish Enhancement Project, the Secretary, in consultation with the Yakama Indian Nation, shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington on the effectiveness of the conservation, training, mitigation, and other measures implemented.

**(e) [Status of improvements and facilities.]**—The Wapato Irrigation Project system improvements and any specific irrigation facility of the Irrigation Demonstration Project (excluding on-farm irrigation facilities) and the Toppenish Enhancement Project shall become features of the Wapato Irrigation Project.

**(f) [Treatment of certain costs.]**—Costs related to Wapato Irrigation Project improvements, the Irrigation Demonstration Project, and the Toppenish Enhancement Project shall be a Federal responsibility and are nonreimbursable and nonreturnable.

**(g) [Redesignation of Yakima Indian Nation to Yakama Indian Nation.]**—

**(1) [Redesignation.]**—The Confederated Tribes and Bands of the Yakima Indian Nation shall be known and designated as the "Confederated Tribes and Bands of the Yakama Indian Nation".

**(2) [References.]**—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Confederated Tribes and Bands of the Yakima Indian Nation referred to in subsection (a) shall be deemed to be a reference to the "Confederated Tribes and Bands of the Yakama Indian Nation". (108 Stat. 4555)

**Sec. 1205. [Operation of Yakima Basin projects.]—(a) [Water savings from Basin Conservation Program.]**—

(1) The Basin Conservation Program is intended to result in reductions in water diversions allowing for changes in the present operation of the Yakima Project to improve stream flow conditions in the Yakima River basin. Except as provided by paragraph (5) of this subsection and section 1209, commencing with the enactment of this title, and notwithstanding that anticipated water savings are yet to be realized, the Secretary, upon the enactment of this title and acting through the Yakima Project Superintendent, shall (A) continue to

October 31, 1994

4048 YAKIMA RIVER BASIN WATER ENHANCEMENT

estimate the water supply which is anticipated to be available to meet water entitlements; and (B) provide instream flows in accordance with the following criteria:

Water Supply Estimate for Period (million acre feet):				Target Flow from Date of Estimate thru October Downstream of (cubic feet per second):	
April thru September	May thru September	June thru September	July thru September	Sunnyside Diversion Dam	Prosser Diversion Dam
(1)3.2	2.9	2.4	1.9	600	600
(2)2.9	2.65	2.2	1.7	500	500
(3)2.6	2.4	2.0	1.5	400	400
Less than line 3 water supply				300	300

(2) The initial target flows represent target flows at the respective points. Reasonable fluctuations from these target flows are anticipated in the operation of the Yakima Project, except that for any period exceeding 24 hours—

(A) actual flows at the Sunnyside Diversion Dam may not decrease to less than 65 percent of the target flow at the Sunnyside Diversion Dam; and

(B) actual flows at the Prosser Diversion Dam may not increase by more than 50 cubic feet per second from the target flow.

(3) The instream flows shall be increased for interim periods during any month of April through October to facilitate when necessary the outward migration of anadromous fish. Increased instream flows for such interim periods shall be obtained through voluntary sale and leasing of water or water rights or from conservation measures taken under this title.

(4)(A)(i) Within the three-year period beginning when appropriations are first provided to carry out the Basin Conservation Program, the instream flow goal in the Yakima River is as follows: to secure water which is to be used for instream flows to facilitate meeting recommendations of the System Operations Advisory Committee for flushing flows or other instream uses.

(ii) In addition to any other authority of the Secretary to provide water for flushing flows, the water required to meet the goal specified in clause (i) shall be acquired through the voluntary purchase or lease of land, water, or water rights and from the development of additional storage capability at Lake Cle Elum provided for in section 1206(a).

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4049

(iii) In addition to water required to meet the instream flow goal specified in clause (i) the System Operations Advisory Committee may recommend additional water to meet instream flow goals pursuant to judicial actions.

(B) After the period referred to in subparagraph (A), such instream flow goal is modified as follows:

(i) The goal increases so that the instream target flows specified in the table in paragraph (i) increase by 50 cubic feet per second for each 27,000 acre-feet of reduced annual water diversions achieved through implementation of measures under the Basin Conservation Program. Such increases do not apply to actions taken pursuant to section 1204. Such increases shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(ii) The goal changes directly with the availability of water resulting from Federal expenditures under this title for purchase or lease of water under this title.

(C) The Yakima Project Superintendent shall maintain an account of funded and completed conservation measures taken under the Basin Conservation Program.

(D) No later than March 31 of each calendar year, the Yakima Project Superintendent shall meet with the State of Washington, Yakama Indian Nation, and Yakima River basin irrigators to mutually determine total diversion reductions and respective adjustments to the target flows referred to in this subsection. The Yakima Project Superintendent shall announce such adjustments with the announcements of Total Water Supply Available. For the purposes of this subparagraph, conserved water will be considered available for adjusting target flows in the first year following completion of a measure or following a result from the post implementation monitoring and evaluation program, as the case may be.

(5) Operational procedures and processes in the Yakima River basin which have or may be implemented through judicial actions shall not be impacted by this title.

(6)(A) Within three years after the date of enactment of this Act, the Secretary shall conduct a study and submit a report with recommendations to the appropriate committees of the Congress on whether the water supply available for irrigation is adequate to sustain the agricultural economy of the Yakima River basin.

(B) The target flows provided for under this subsection shall be evaluated within three years after the date of enactment of this Act by the Systems Operations Advisory Committee for the purpose of making a report with recommendations to the Secretary and the Congress evaluating what is necessary to have biologically based target flows.

October 31, 1994

4050 YAKIMA RIVER BASIN WATER ENHANCEMENT

(C) The recommendations and reports under subparagraphs (A) and (B) shall provide a basis for the third phase of the Yakima River Basin Water Enhancement Project. (108 Stat. 4557)

**(b) [Water from Lake Cle Elum.]**—Water accruing from the development of additional storage capacity at Lake Cle Elum, made available pursuant to the modifications authorized in section 1206(a), shall not be part of the Yakima River basin's water supply as provided in subsection (a)(1). Water obtained from such development is exclusively dedicated to instream flows for use by the Yakima Project Superintendent as flushing flows or as otherwise advised by the System Operations Advisory Committee. Water may be carried over from year-to-year in the additional capacity to the extent that there is space available. Releases may be made from other Yakima Project storage facilities to most effectively utilize this additional water, except that water deliveries to holders of existing water rights shall not be impaired.

**(c) [Status of Basin Conservation Program facilities.]**—Measures of the Basin Conservation Program which are implemented on facilities currently under the administrative jurisdiction of the Secretary, except as provided in section 1204, shall be considered features of the Yakima River Basin Water Enhancement Project, and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. The responsibility for operation and maintenance and the related costs shall remain with the current operating entity. As appropriate, the Secretary shall incorporate the operation and maintenance of such facilities into existing agreements. The Secretary shall assure that such facilities are operated in a manner consistent with Federal and State law and in accordance with water rights recognized pursuant to State and Federal law.

**(d) [Water acquired by purchase and lease.]**—Water acquired from voluntary sellers and lessors shall be administered as a block of water separate from the Total Water Supply Available, in accordance with applicable Federal and State law.

**(e) [Yakima Project purpose.]**—(1) An additional purpose of the Yakima Project shall be for fish, wildlife, and recreation.

(2) The existing storage rights of the Yakima Project shall include storage for the purposes of fish, wildlife, and recreation.

(3) The purposes specified in paragraphs (1) and (2) shall not impair the operation of the Yakima Project to provide water for irrigation purposes nor impact existing contracts. (108 Stat. 4557)

**Sec. 1206. [Lake Cle Elum authorization of appropriations.]**—(a) **[Modifications and improvements.]**—There is hereby authorized to be appropriated to the Secretary—

(1) at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuation of applicable indexes, \$2,934,000 to—

(A) modify the radial gates at Cle Elum Dam to provide an additional 14,600 acre-feet of storage capacity in Lake Cle Elum,

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4051

- (B) provide for shoreline protection of Lake Cle Elum, and
- (C) construct juvenile fish passage facilities at Cle Elum Dam, plus

(2) such additional amounts as may be necessary which may be required for environmental mitigation.

**(b) [Operation and maintenance appropriations.]**—There is hereby authorized to be appropriated to the Secretary such sums as may be necessary for that portion of the operation and maintenance of Cle Elum Dam determined by the Secretary to be a Federal responsibility. (108 Stat. 4560)

**Sec. 1207. [Enhancement of water supplies for Yakima Basin tributaries.]**—**(a) [General provisions.]**—The following shall be applicable to the investigation and implementation of measures to enhance water supplies for fish and wildlife and irrigation purposes on tributaries of the Yakima River basin:

(1) An enhancement program authorized by this section undertaken in any tributary shall be contingent upon the agreement of appropriate water right owners to participate.

(2) The enhancement program authorized by this section shall not be construed to affect (A) the water rights of any water right owners in the tributary or other water delivering entities;

(B) the capability of tributary water users to divert, convey, and apply water; and

(C) existing water and land uses within the tributary area.

(3) The water supply for tributary enhancement shall be administered in accordance with applicable State and Federal laws.

(4) Any enhancement program authorized by this section shall be predicated upon the availability of a dependable water supply.

**(b) [Study.]**—(1) The Secretary, following consultation with the State of Washington, the tributary water right owners, and the Yakama Indian Nation, and agreement of appropriate water right owners to participate, shall conduct a study concerning the measures that can be implemented to enhance water supplies for fish and wildlife and irrigation purposes on Taneum Creek, including (but not limited to)—

(A) water use efficiency improvements;

(B) the conveyance of water from the Yakima Project through the facilities of any irrigation entity willing to contract with the Secretary without adverse impact to water users;

(C) the construction, operation, and maintenance of ground water withdrawal facilities;

(D) contracting with any entity that is willing to voluntarily limit or forego present water use through lease or sale of water or water rights on a temporary or permanent basis;

(E) purchase of water rights from willing sellers; and

(F) other measures compatible with the purposes of this title, including restoration of stream habitats.

(2) In conducting the Taneum Creek study, the Secretary shall consider—

(A) the hydrologic and environmental characteristics;

October 31, 1994

4052 YAKIMA RIVER BASIN WATER ENHANCEMENT

(B) the engineering and economic factors relating to each measure; and  
(C) the potential impacts upon the operations of present water users in the tributary and measures to alleviate such impacts.

(3) The Secretary shall make available to the public for a 45-day comment period a draft report describing in detail the findings, conclusions, and recommendations of the study. The Secretary shall consider and include any comment made in developing a final report. The Secretary's final report shall be submitted to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington, and made available to the public. (108 Stat. 4560)

**(c) [Implementation of nonstorage measures.]**—After securing the necessary permits the Secretary may, in cooperation with the Department of Ecology of the State of Washington and in accordance with the laws of the State of Washington, implement nonstorage measures identified in the final report under subsection (b) upon fulfillment of the following conditions:

(1) The Secretary shall enter into an agreement with the appropriate water right owners who are willing to participate, the State of Washington, and the Yakama Indian Nation, for the use and management of the water supply to be provided by proposed tributary measures pursuant to this section.

(2) The Secretary and the State of Washington find that the implementation of the proposed tributary measures will not impair the water rights of any person or entity in the affected tributary.

**(d) [Other Yakima River Basin tributaries.]**—Enhancement programs similar to the enhancement program authorized by this section may be investigated and implemented by the Secretary in other tributaries contingent upon the agreement of the appropriate tributary water right owners to participate. The provisions set forth in this section shall be applicable to such programs.

**(e) [Authorization of appropriations.]**—(1) There is hereby authorized to be appropriated to the Secretary \$500,000 for the study of the Taneum Creek Project and such amount as the Secretary subsequently determines is necessary for implementation of tributary measures pursuant to this section.

(2) There is also authorized to be appropriated to the Secretary such funds as are necessary for the investigation of enhancement programs similar to the enhancement program authorized by this section in other Yakima River basin tributaries contingent upon the agreement of the appropriate water right owners to participate. Funds for the implementation of any such similar enhancement program may not be appropriated until after the Secretary submits an investigation report to the appropriate congressional committees.

**Sec. 1208. [Chandler Pumping Plant and Powerplant-operations at Prosser Diversion Dam.]**—(a) **[Authorization of appropriations for electrification.]**—In order to provide for electrification to enhance instream

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4053

flows by eliminating the need to divert water to operate the hydraulic turbines which pump water to the Kennewick Irrigation District there is authorized to be appropriated—

- (1) \$50,000 to conduct an assessment of opportunities for alternative pumping plant locations;
- (2) \$13,000,000, at 1997 prices, for construction plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes; and
- (3) such sums as may be necessary for the pro rata share of the operation and maintenance allocated to fish and wildlife as determined by the Secretary.

EXPLANATORY NOTE

**1997 Amendment.** Section 507 of the Act of October 13, 1997 (Public Law 105-62, 111 Stat. 1339) amended subsection 1208(a)(2) by striking "\$4,000,000 for construction" and inserting "\$13,000,000, at 1997 prices, for construction plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes". The 1997 Act appears in Volume V at page 4114.

**(b) [Power for project pumping.]—**(1) The Administrator of the Bonneville Power Administration shall provide for project power needed to effect the electrification as provided in subsection (a).

(2)(A) There is authorized to be appropriated for the Bureau of Reclamation for each fiscal year in which the Administrator provides power under this subsection an amount equal to the cost to the Bonneville Power Administration of providing power under this subsection during such fiscal year. The rate to be utilized by the Administrator in determining the cost of power under this paragraph in a fiscal year shall be the rate for priority firm power charged by the Bonneville Power Administration in that fiscal year under section 7(b) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839e(b)).

(B) The Bureau of Reclamation shall, using funds appropriated pursuant to the authorization of appropriations in subparagraph (A), reimburse the Bonneville Power Administration for the costs of the project power provided under this subsection. Such funds shall be available for such purpose without fiscal year limitation.

EXPLANATORY NOTE

**Reference in the Text.** The Pacific Northwest Electric Power Planning and Conservation Act, Act of December 5, 1980 (Public Law 96-501, 94 Stat. 2697) referenced in section 1208(b)(2)(A) above appears in Volume IV at page 3225.

October 31, 1994

4054 YAKIMA RIVER BASIN WATER ENHANCEMENT

(c) **[Subordination.]**—Any diversions for hydropower generation at the Chandler Powerplant shall be subordinated to meet the flow targets determined under subsection (f).

(d) **[Water supply for Kennewick Irrigation District.]**—The Secretary shall ensure that the irrigation water supply for the Kennewick Irrigation District shall not be affected by conservation, electrification, or subordination pursuant to this title and any reduction in its irrigation water supply resulting from conservation measures adopted or implemented by other entities pursuant to this title shall be replaced by water developed through subordination, electrification, or a combination of the two.

(e) **[Treatment of certain funds.]**—Funds appropriated and project power provided pursuant to this section shall be nonreimbursable since such funds are used for fish and wildlife purposes and such funds are not subject to cost share under section 1203(d).

(f) **[Target flows.]**—Target flows measured at appropriate biological and hydrological location or locations shall be determined by the Yakima Project Superintendent in consultation with the System Operations Advisory Committee. (108 Stat. 4562)

**Sec. 1209. [Augmentation of Kachess Reservoir stored water.]**—

(a) **[Authorization of appropriations.]**—In order to augment Kachess Reservoir stored water supplies from flows of Cabin Creek and Silver Creek which are excess to system demands, there is authorized to be appropriated—

(1) such sums as may be necessary to carry out a feasibility study, including the benefits, costs, and environmental aspects, of the facility described in paragraph (2);

(2) for the construction of facilities to convey such flows to Kachess Reservoir, \$20,000,000; and

(3) such sums as may be necessary for the pro rata share of the operation and maintenance allocated to fish and wildlife determined by the Secretary.

(b) **[Limitation.]**—Construction of the facilities described in subsection (a)(1) is contingent on the completion of the feasibility study referred to in subsection (a)(2).

(c) **[Use of additional water.]**—The stored water supply resulting from the construction of facilities under this section shall be used by the Secretary to—

(1) enhance the water supply available to the Kittitas Reclamation District and the Roza Irrigation District in years of proration; and

(2) facilitate reservoir operations in the Easton Dam to Keechelus Dam reach of the Yakima River for the propagation of anadromous fish.

(d) **[Treatment of costs.]**—The construction and operation and maintenance costs of the facilities under this section shall be allocated to irrigation and fishery enhancement, as follows:

(1) The portion of such costs allocated to irrigation is reimbursable, with the construction costs to be paid prior to initiation of construction by the Kittitas Reclamation District and the Roza Irrigation District.

October 31, 1994

YAKIMA RIVER BASIN WATER ENHANCEMENT 4055

(2) The portion of such costs allocated to fishery enhancement is nonreimbursable. (108 Stat. 4563)

**(e) [Kachess Dam modifications—Appropriation authorization.]**—There is authorized to be appropriated \$2,000,000 for the modification of the discharge facilities of Kachess Dam to improve reservoir operations for anadromous fish enhancement. Amounts appropriated under this subsection are nonreimbursable.

**Sec. 1210. [Interim Comprehensive Basin Operating Plan.]—(a) [Development.]**—The Secretary shall, in consultation with the State of Washington, Yakama Indian Nation, Yakima River Basin irrigation districts, Bonneville Power Administration, and other entities as determined by the Secretary, develop an interim comprehensive operating plan for providing a general framework within which the Yakima Project Superintendent operates the Yakima Project, including measures implemented under the Yakima River Basin Water Enhancement Project, including (but not limited to)—

- (1) operating capability and constraints of the system;
- (2) information on water supply calculations and water needs;
- (3) system operations and stream flow objectives; and
- (4) tile System Operations Advisory Committee activities.

**(b) [Process requirements.]**—A draft of the interim comprehensive basin operating plan shall be completed within 18 months after the completion of the Basin Conservation Plan under section 1203(f) and, upon completion, published for a 90-day public review period. The Secretary shall complete and publish the final interim comprehensive operating plan within 90 days after the close of the public review period. The Secretary shall update the plan as needed to respond to decisions from water adjudications relating to the Yakima River basin.

**(c) [Authorization of appropriations.]**—There is authorized to be appropriated \$100,000 to carry out this section. (108 Stat. 4563)

**Sec. 1211. [Environmental compliance—Appropriation authorization.]**—There are hereby authorized to be appropriated to the Secretary \$2,000,000 for environmental compliance activities including the conduct, in cooperation with the State of Washington, of an inventory of wildlife and wetland resources in the Yakima River basin and an investigation of measures, including "wetland banking", which could be implemented to address potential impacts which could result from the activities taken under this title.

**Sec. 1212. [Savings and contingencies.]—(a) [In general.]**—Nothing in this title shall be construed to—

- (1) affect or modify any treaty or other right of the Yakama Indian Nation;
- (2) authorize the appropriation or use of water by any Federal, State, or local agency, the Yakama Indian Nation, or any other entity or individual;
- (3) impair the rights or jurisdictions of the United States, the States, the Yakama Indian Nation, or other entities over waters of any river or stream or over any ground water resource;
- (4) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

October 31, 1994

4056 MIGRATORY BIRD CONSERVATION ACT

(5) alter, establish, or impair the respective rights of States, the United States, the Yakama Indian Nation, or any other entity or individual with respect to any water or water-related right;

(6) alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, the Yakama Indian Nation, or other entity, public or private;

(7) affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;

(8) affect or modify the settlement agreement between the United States and the State of Washington filed in Yakima County Superior Court with regard to Federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members;

(9) affect or modify the rights of any Federal, State, or local agency, the Yakama Indian Nation, or any other entity, public or private with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including State against Acquavella, or constitute evidence in any such proceeding in which any water or water related right is adjudicated; or

(10) preclude other planning studies and projects to accomplish the purposes of this title by other means: funded publicly, privately, or by a combination of public and private funding.

**(b) [Contingency based on appropriations.]**—The performance of any activity under this title which requires accomplishment within a specified period that may require appropriation of money by Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. (108 Stat. 4564, Title not codified.)

TITLE XIII—LIMITATION ON APPLICATION OF REQUIREMENT  
FOR ACQUISITIONS BY UNITED STATES UNDER MIGRATORY  
BIRD CONSERVATION ACT

**[Section 7 of the Migratory Bird Conservation Act.]**—Section 7 of the Migratory Bird Conservation Act (16 U.S.C. § 715f) is amended by inserting "in fee" after "conveyance". (108 Stat. 4565, 16 U.S. C. § 715f.)

EXPLANATORY NOTES

**Not Codified.** Titles I, III, VI, VII, VIII, IX, X, XI, and XII of this Act are not codified in the U.S. Code.

**Reference in the Text.** The Migratory Bird Conservation Act, Act of February 18, 1929, (ch. 257, 45 Stat. 1222; 16 U.S.C. § 715f.) referenced in Title XIII does not appear herein.

**Legislative History.** S. 1146, Public Law

103-434 in the 103<sup>rd</sup> Congress. Reported in the Senate from Indian Affairs; S. Report No. 103-239. Passed the Senate July 26, 1994. Reported in the House from Natural Resources; H.R. Report No. 103-812. Passed the House October 3, 1994. Senate concurred in House amendment on October 4, 1994.

November 2, 1994

4057

## **CONFEDERATED TRIBES OF THE COLVILLE RESERVATION GRAND COULEE DAM SETTLEMENT ACT**

An Act to provide for the settlement of the claims of the Confederated Tribes of the Colville Reservation concerning their contribution to the production of hydropower by the Grand Coulee Dam and for other purposes. (Act of November 2, 1994, Public Law 103-436, 108 Stat. 4577)

**Section 1. [Short title.]**—This Act may be cited as the "Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act".

**Sec. 2. [Definitions.]**—For purposes of this Act: (1) The term "Administrator" means the Administrator of the Bonneville Power Administration.

(2) The term "Bonneville Power Administration" means the Bonneville Power Administration of the Department of Energy or any successor Agency, Corporation, or entity that markets power produced at the Dam.

(3) The term "Dam" means the Grand Coulee Dam operated by the Bureau of Reclamation of the Department of the Interior, the power from which is marketed by the Bonneville Power Administration of the Department of Energy.

(4) The term "Settlement Agreement" means the Settlement Agreement entered into between the United States and the Tribe, signed by the United States on April 21, 1994, and by the Tribe on April 16, 1994, to settle the claims of the Tribe in Docket 181-D of the Indian Claims Commission, which docket has been transferred to the United States Court of Federal Claims.

(5) The term "Tribe" means the Confederated Tribes of the Colville Reservation, a federally recognized Indian tribe. (108 Stat.4577)

### EXPLANATORY NOTE

**Reference in the Text.** The Settlement Agreement with the Tribe referenced above does not appear herein.

**Sec. 3. [Findings and purposes.]-(a) [Findings.]**— The Congress finds that—(1) there is pending before the United States Court of Federal Claims, a suit by the Confederated Tribes of the Colville Reservation against the United States, in which the Tribe seeks to recover damages under the "Fair and Honorable Dealings" clause of the Indian Claims Commission Act (Act of August 13, 1946, 60 Stat. 1049), and in which, although the matter is in dispute, the potential liability of the United States is substantial;

(2) the claim alleges that the United States has since the construction of Grand Coulee Dam used Colville Reservation land in the generation of electric power and will continue to use such reservation land for as long as

November 2, 1994

4058 CONFEDERATED TRIBES OF COLVILLE RESERVATION

Grand Coulee Dam produces power; and that the United States has promised and undertaken to pay the Tribe for such use and has not done so;

(3) the United States, after years of litigation, has negotiated a Settlement Agreement with the Tribe, signed by the Department of Justice, the Bonneville Power Administration and the Department of the Interior. The Settlement Agreement is contingent on the enactment of the enabling legislation; and

(4) the Settlement Agreement, approved in this Act, will provide mutually agreeable compensation for the past use of reservation land in connection with the generation of electric power at Grand Coulee Dam, and will establish a method to ensure that the Tribe will be compensated for the future use of reservation land in the generation of electric power at Grand Coulee Dam, and will settle the claims of the Tribe against the United States brought under the Indian Claims Commission Act.

EXPLANATORY NOTE

**Reference in the Text.** The Indian Claims Commission Act, Act of August 13, 1946, referenced above does not appear herein.

**(b) [Purposes.]**—It is the purpose of this Act—(1) to approve and ratify the Settlement Agreement entered into by the United States and the Tribe; and

(2) to direct the Bonneville Power Administration to carry out its obligations under the Settlement Agreement. (108 Stat. 4578)

**Sec. 4. [Approval, ratification, and implementation of Settlement Agreement.]—(a) [Approval and ratification.]**—The Settlement Agreement is approved and ratified.

**(b) [Annual payments.]**—The Bonneville Power Administration shall make annual payments to the Tribe as set forth in the Settlement Agreement and shall carry out its other obligations under the Settlement Agreement.

**(c) [Settlement.]**—Consistent with the negotiated terms of the Settlement Agreement, the United States shall join in the motion that the Tribe has agreed to file in *Confederated Tribes v. United States*, Indian Claims Commission Docket 181-D, for the entry of a compromise final judgment in the amount of \$53,000,000. The judgment shall be paid from funds appropriated pursuant to section 1304 of title 31, United States Code, and is not reimbursable by the Bonneville Power Administration.

**Sec. 5. [Distribution of the settlement funds.]—(a) [Lump-sum payment.]**—The judgment of \$53,000,000, when paid, shall be deposited in the Treasury of the United States and the principal amount and interest on the judgment, shall be credited to the account of the Tribe. These funds may be advanced or expended for any purpose by the tribal governing body of the Confederated Tribes of the Colville Reservation, pursuant to a distribution plan developed by the Tribe and approved by the Secretary of the Interior pursuant

November 2, 1994

CONFEDERATED TRIBES OF COLVILLE RESERVATION 4059

to section 3 of Public Law 93-134 (25 U.S.C. § 1403): *Provided*, That any payment to a minor under the distribution plan shall be held in trust by the United States for the minor until the minor reaches the age of 18, or until the minor's class is scheduled to graduate from high school, whichever is later: *Provided further*, That emergency use of trust funds may be authorized for the benefit of the minor pursuant to regulations of the Bureau of Indian Affairs.

EXPLANATORY NOTE

**Reference in the Text.** Public Law 93-134 appear herein.  
(25 U.S.C. 1403) referenced above does not

**(b) [Annual payments.]**—In addition to the lump-sum payment, annual payments shall be made directly to the Tribe in accordance with the Settlement Agreement, and may be used in the same manner as any other income received by the tribe from the lease or sale of natural resources. (108 Stat. 4578)

**Sec. 6. [Repayment credit.]**—Beginning with fiscal year 2000 and continuing for so long as annual payments are made under this Act, the Administrator shall deduct from the interest payable to the Secretary of the Treasury from net proceeds as defined in section 13 of the Federal Columbia River Transmission System Act, an amount equal to 26 percent of the payment made to the Tribe for the prior fiscal year. Each deduction made under this section shall be a credit to the interest payments otherwise payable by the Administrator to the Secretary of the Treasury during the fiscal year in which the deduction is made, and shall be allocated pro rata to all interest payments on debt associated with the generation function of the Federal Columbia River Power System that are due during that fiscal year; except that, if the deduction in any fiscal year is greater than the interest due on debt associated with the generation function for that fiscal year, then the amount of the deduction that exceeds the interest due on debt associated with the generation function shall be allocated pro rata to all other interest payments due during that fiscal year. To the extent that the deduction exceeds the total amount of any such interest, the deduction shall be applied as a credit against any other payments that the Administrator makes to the Secretary. (108 Stat. 4579)

EXPLANATORY NOTE

**Reference in the Text.** The Federal Stat. 1376) referenced above appears in Volume Columbia River Transmission System Act, Act IV at page 2888. Amendments appear at page of October 18, 1974 (Public Law 93-454, 88 3263.

**Sec. 7. [Miscellaneous provisions.]—(a) [Liens and forfeitures, etc.]**—Funds paid or deposited to the credit of the Tribe pursuant to the

November 2, 1994

4060 CONFEDERATED TRIBES OF COLVILLE RESERVATION

Settlement Agreement or this Act, the interest or investment income earned or received on those funds, and any payment authorized by the Tribe or the Secretary of the Interior to be made from those funds to tribal members, and the interest or investment income on those payments earned or received while the payments are held in trust for the member, are not subject to levy, execution, forfeiture, garnishment, lien, encumbrance, seizure, or State or local taxation.

**(b) [Eligibility for Federal and federally funded programs.]**—Funds paid or deposited to the credit of the Tribe pursuant to the Settlement Agreement or this Act, the interest or investment income earned or received on such funds, and any payment authorized by the Tribe or the Secretary of the Interior to be made from those funds to tribal members, and the interest or investment income on those payments earned or received while the payments are held in trust for the member, may not be treated as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefit to which the Tribe, a tribal member, or household would otherwise be entitled under the Social Security Act or any Federal or federally assisted program. (108 Stat. 4579)

**(c) [Trust responsibility.]**—This Act and the Settlement Agreement do not affect the trust responsibility of the United States and its agencies to the Tribe and the members of the Tribe. (108 Stat. 4580)

EXPLANATORY NOTES

**Codification.** This Act is not codified in the U.S. Code.

**References in the Text.** The Social Security Act referenced above does not appear herein.

**Legislative History.** H.R. 4757 (S. 2259), Public Law 103-436 in the 103<sup>d</sup> Congress.

Reported in the House from Natural Resources; H.R. Rept. No. 103-685. Considered and Passed House October 3, 1994. Reported in the Senate from Indian Affairs; S. Rept. No. 103-356 accompanying S. 2259. Considered and passed the Senate October 7, 1994.

**UNITED STATES CODE TECHNICAL  
IMPROVEMENTS ACT OF 1994**

**[Extract from]** an Act to make technical improvements in the United States Code by amending provisions to reflect the current names of congressional committees. (Act of November 2, 1994, Public Law 103-437, 108 Stat. 4581)

\* \* \* \* \*

**Section 16. [Title 43, United States Code.]**—(a) The following provisions are amended by striking "Interior and Insular Affairs" each place it appears and substituting "Natural Resources":

(1) sections 4(b)(1) and 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(b)(1), 31g).

(2) sections 1606(c), 1608(c), 1609(c), 1610(c), 1611(c), 1616(c), 3003(a), and 3004(b)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. 371(note), 390h-4(c), 390h-6(c), 390h-7(c), 390h-8(c), 390h-9(c), 390h-14(c)).

(3) section 224(g) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(g)).

(4) section 3(a) of the Colorado River Floodway Protection Act (43 U.S.C. 1600a(a)).

(5) section 34(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629(j)).

(6) section 103 of the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2213).

(b) Section 4(e) of the Small Reclamation Projects Act of 1956 (43 U.S.C. 422d(e)) is amended by striking "House nor the Senate Interior and Insular Affairs Committee" and substituting "Committee on Natural Resources of the House of Representatives nor the Committee on Energy and Natural Resources of the Senate".

(c) Section 1 of the Act of October 7, 1949 (known as the Rehabilitation and Betterment Act of 1949) (43 U.S.C. 504), is amended by striking "Committee on Interior and Insular Affairs of the Senate and the Committee on Public Lands of the House" and substituting "Committee on Energy and Natural Resources of the Senate Committee on Natural Resources of the House".

(d) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) is amended as follows:

(1) In section 204 (43 U.S.C. 1714)—

(A) in subsection (e)—

(i) strike "Committee on Interior and Insular Affairs of either the House of Representatives or the Senate" and substitute "Committee on Natural

November 2, 1994

4062

TECHNICAL IMPROVEMENTS ACT

Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate"; and

(ii) strike "the Committees on Interior and Insular Affairs of the Senate and the House of Representatives" and substitute "both of those Committees"; and

(B) in subsection (f), strike "Committees on Interior and Insular Affairs of the House of Representatives and the Senate" and substitute "Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate".

(2) In section 215(b)(5) (43 U.S.C. 1723(b)(5)), strike "Interior and Insular Affairs" and substitute "Natural Resources".

(3) In section 311(b) (43 U.S.C. 1741(b)), strike "Committees on Interior and Insular Affairs of the House and Senate" and substitute "Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate". (108 Stat. 4594)

\* \* \* \* \*

EXPLANATORY NOTE

**Legislative History.** H.R. 4777, Public Law 103-437 in the 103<sup>rd</sup> Congress. Reported in House from Judiciary; Rept. No. 103-779. Considered and passed House October 3, 1994. Considered and passed Senate October 6, 1994.

July 28, 1995

4063

## **COLORADO RIVER BASIN SALINITY CONTROL ACT AMENDMENTS**

An Act to amend the Colorado River Basin Salinity Control Act (Act of June 24, 1974, 88 Stat. 266, as amended, 43 U.S.C. § 1571) to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes. (Act of July 28, 1995, Public Law 104-20, 109 Stat. 255)

**Section 1. [Amendments to the Colorado River Basin Salinity Control Act—Basinwide salinity control program—Increased appropriations—Clerical amendments.]—**The Colorado River Basin Salinity Control Act (43 U.S.C. § 1571 et seq.) is amended—

(1) in section 202(a)-(A) in the first sentence—

(i) by striking "the following salinity control units" and inserting "the following salinity control units and salinity control program"; and (ii) by striking the period and inserting a colon; and

(B) by adding at the end the following new paragraph: "(6) A basinwide salinity control program that the Secretary, acting through the Bureau of Reclamation, shall implement. The Secretary may carry out the purposes of this paragraph directly, or may make grants, commitments for grants, or advances of funds to non-Federal entities under such terms and conditions as the Secretary may require. Such program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources that the Secretary considers appropriate. Such program shall provide for the mitigation of incidental fish and wildlife values that are lost as a result of the measures and associated works. The Secretary shall submit a planning report concerning the program established under this paragraph to the appropriate committees of Congress. The Secretary may not expend funds for any implementation measure under the program established under this paragraph before the expiration of a 30-day period beginning on the date on which the Secretary submits such report"; (43 U.S.C. § 1592.)

(2) in section 205(a)-(A) in paragraph (1) by striking "authorized by section 202(a) (4) and (5)" and inserting "authorized by paragraphs (4) through (6) of section 202(a)"; and

(B) in paragraph (4)(i), by striking "sections 202(a)(4) and (5)" each place it appears and inserting "paragraphs (4) through (6) of section 202";

(3) in section 208, by adding at the end the following new subsection: "(c) In addition to the amounts authorized to be appropriated under subsection (b), there are authorized to be appropriated \$75,000,000 for subsection 202(a), including constructing the works described in paragraph 202(a)(6) and carrying

July 28, 1995

4064 COLORADO RIVER BASIN SALINITY CONTROL ACT

out the measures described in such paragraph. Notwithstanding subsection (b), the Secretary may implement the program under paragraph 202(a)(6) only to the extent and in such amounts as are provided in advance in appropriations Acts"; and

(4) in subsection 202(b)(4) delete "units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5)" and insert in lieu thereof "units authorized to be constructed or the program pursuant to paragraphs (1), (2), (3), (4), (5), and (6)". (109 Stat. 255-256; 43 U.S.C. § 1592; 43 U.S.C. §§ 1595-1598)

EXPLANATORY NOTES

**Reference in the Text.** The Colorado River Basin Salinity Control Act (Act of June 24, 1974, 88 Stat. 266, as amended by the Act of September 4, 1980, Public Law 96-366, 94 Stat. 1063) appears in Volume IV at page 2857. The 1980 Act appears at page 3200. Extracts from the Act as amended by the Act of October 30, 1984, (Public Law 98-569, 98 Stat. 2933); this Act (Public Law 104-20, 109 Stat. 255); and the

Act of April 4, 1996 (Public Law 104-127, 110 Stat. 1006); (43 U.S.C. § 1571 et seq.) appear in Supplement II at page S1038.

**Legislative History.** S. 523, Public Law 104-20 in the 104<sup>th</sup> Congress. Reported in the Senate from Energy and Resources, S. Rept. No. 104-24. Passed Senate, April 27, 1995. Reported in the House from Resources, H.R. Rept. No. 104-132. Passed House, July 11, 1995.

November 13, 1995

4065

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1996**

**[Extracts from]** an Act making appropriations for energy and water development for the fiscal year ending September 30, 1996, and for other purposes. (Act of November 13, 1995, Public Law 104-46, 109 Stat. 402)

\* \* \* \* \*

**TITLE V—GENERAL PROVISIONS**

**Sec. 501. [Federal Power Marketing Administration—Employment levels.]**—Section 510 of Public Law 101-514, the Fiscal Year 1991 Energy and Water Development Appropriations Act, is repealed. (42 U.S.C. § 7133.)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Act of November 5, 1990 (Public Law 101-514, 104 Stat. 2074) referenced above appear in Volume V at page 3659. Section 510 of that Act prohibited the executive branch from changing the employment levels determined by the Administrators of the Federal Power Marketing Administrations to be necessary to carry out their responsibilities under the Department of Energy Organization Act and related laws.

**Sec. 502. [Western Water Policy Review.]**—Notwithstanding the provisions of any other law, the report referred to in title 30 of Public Law 102-575 shall be submitted within five years from the date of enactment of that Act. (43 U.S.C. § 371 note.)

EXPLANATORY NOTE

**Reference in the Text.** Title XXX of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4693) appears in Volume V at page 3918.

\* \* \* \* \*

**Sec. 504. [Trinity River Basin Fish and Wildlife Management Act.]**—Section 4(a) of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2723), is amended—(a) in paragraph (1), by striking "October 1, 1995" and inserting in lieu thereof

November 13, 1995

4066 ENERGY AND WATER APPROPRIATIONS ACT, 1996

"October 1, 1996"; and (b) in paragraph (2), by striking "ten-year" and inserting in lieu thereof "eleven-year". (109 Stat. 419)

EXPLANATORY NOTE

**Reference in the Text.** The Act of October 24, 1984 (Public Law 98-541, 98 Stat. 2721, as amended) appears in Volume V at page 3439.

\* \* \* \* \*

**Sec. 507. [Construction of certain facilities for the Animas-La Plata project.]**—In order to ensure the timely implementation of the Colorado Ute Indian Water Rights Settlement Act of 1988, the Secretary of the Interior is directed to proceed without delay with construction of those facilities in conformance with the final Biological Opinion for the Animas-La Plata project, Colorado and New Mexico, dated October 25, 1991.

EXPLANATORY NOTE

**Reference in the Text.** The Colorado Ute Indian Water Rights Settlement Act of 1988, Act of November 3, 1988 (Public Law 100-585, 102 Stat. 2973) appears in Volume V at page 3625.

**Sec. 508. (a) [Bonneville Power Administration—Northwest Power and Conservation Planning Council—Excess Federal Power—Definitions.]**—In this section:

(1) **[Administrator.]**—The term "Administrator" means the Administrator of the Bonneville Power Administration.

(2) **[Council.]**—The term "Council" means the Northwest Power and Conservation Planning Council.

(3) **[Excess Federal power.]**—The term "excess Federal power" means such electric power that has become surplus to the firm contractual obligations of the Administrator under section 5(f) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839c(f)) due to either (A) any reduction in the quantity of electric power that the Administrator is contractually required to supply under subsections (b) and (d) of section 5 of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839c), due to the election by customers of the Bonneville Power Administration to purchase electric power from other suppliers, as compared to the quantity of electric power that the Administrator was contractually required to supply as of January 1, 1995; or

(B) those operations of the Federal Columbia River Power System that are primarily for the benefit of fish and wildlife affected by the development, operation, or management of the System.

November 13, 1995

ENERGY AND WATER APPROPRIATIONS ACT, 1996 4067

EXPLANATORY NOTE

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

**(b) [Sale of excess Federal power.]**—Notwithstanding section 2, subsections (a), (b), and (c) of section 3, and section 7 of Public Law 88-552 (16 U.S.C. §§ 837a, 837b, and 837f), and section 9(c) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839f(c)), the Administrator may, as permitted by otherwise applicable law, sell or otherwise dispose of excess Federal power (1) outside the Pacific Northwest on a firm basis for a contract term of not to exceed 7 years, if the excess Federal power is first offered for a reasonable period of time and under the same essential rate, terms and conditions to those Pacific Northwest public body, cooperative and investor-owned utilities and those direct service industrial customers identified in subsection (b) or (d)(1)(A) of section 5 of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839c); and

(2) in any region without the prohibition on resale established by the second sentence of section 5(a) of the Act entitled "An Act to authorize the completion, maintenance, and operation of Bonneville project for navigation, and for other purposes", approved August 20, 1937 (commonly known as the "Bonneville Project Act of 1937") (16 U.S.C. § 832d(a)).

EXPLANATORY NOTE

**References in the Text.** The Act of August 31, 1964 (Public Law 88-552, 78 Stat. 756) referenced above appears in Volume III at page 1760. Amendments and annotations to the 1964 Act appear in Supplement I at page S352. The Act of August 20, 1937 (ch. 720, 50 Stat. 731) referenced above appears in Volume I at page 568. Annotations to the 1937 Act appear in Supplement I at page S111.

**(c) [Study by Council.]**—(1) Within 180 days of enactment of this Act, the Council shall review and report to Congress regarding the most appropriate governance structure to allow more effective regional control over efforts to conserve and enhance anadromous and resident fish and wildlife within the Federal Columbia River Power System.

**(d) [Corps of Engineers procurement.]**—The Assistant Secretary of the Army for Civil Works, acting through the North Pacific Division of the Corps of Engineers, is authorized to place orders for goods and services related to facilities for electric power generation and fish and wildlife mitigation associated with the Federal Columbia River Power System with and through the Administrator using the authorities available to the Administrator.

November 13, 1995

4068 ENERGY AND WATER APPROPRIATIONS ACT, 1996

(e) **[Residential exchange.]**—Notwithstanding the establishment, confirmation and approval of rates pursuant to 16 U.S.C. § 839e, and notwithstanding the provisions of 16 U.S.C. § 839c(c), the cost benefits of eligible utilities' total purchase and exchange sales under 16 U.S.C. § 839c(c)(1) shall be \$145,000,000 for fiscal year 1997, and the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995.

(f) **[Personnel flexibility.]**—The Administrator may offer employees voluntary separation incentives as deemed necessary which shall not exceed \$25,000. Recipients who accept employment with the United States within five years after separation shall repay the entire amount to the Bonneville Power Administration.

(g) **[Savings.]**—Unless superseded by an Act of Congress, the authority provided by this section is expressly intended to extend beyond the fiscal year. (109 Stat. 419; 16 U.S.C. § 832m.)

\* \* \* \* \*

**[Short title.]**—This Act may be cited as the "Energy and Water Development Appropriations Act, 1996".

EXPLANATORY NOTES

**Codification.** Sections 501, 502, and 508 are codified in the U.S. Code as cited. Other extracts of this Act reprinted here are not codified in the U.S. Code.

**Editor's Note: Provisions Repeated in Appropriations Acts.** Provisions which are repeated in two or more appropriations acts appear herein only in the act in which such provisions are first used.

**Legislative History.** H.R. 1905, Public Law 104-46 in the 104<sup>th</sup> Congress. Reported in the House from Appropriations; H. Repts. Nos. 104-149 and 104-293 (Conference). Reported in Senate from Appropriations; S. Rept. No. 104-120. Passed House July 12, 1995. Passed Senate, amended, August 1, 1995. House and Senate agreed to conference report October 31, 1995.

**FEDERAL REPORTS ELIMINATION AND  
SUNSET ACT OF 1995**

**[Extracts from]** an Act to provide for the modification or elimination of Federal reporting requirements. (Act of December 21, 1995, Public Law 104-66, 109 Stat. 707)

**[Sec. 1 Short title.]**—This Act may be cited as the “Federal Reports Elimination and Sunset Act of 1995”.

**Sec. 2. [Table of contents.]**—The table of contents for this Act is as follows:

Sec. 1. Short title.  
Sec. 2. Table of contents.

**TITLE I—DEPARTMENTS**

\* \* \* \* \*

**Subtitle E—Department of Energy**

Sec. 1051. Reports eliminated.  
Sec. 1052. Reports modified.

\* \* \* \* \*

**Subtitle H—Department of the Interior**

Sec. 1081. Reports eliminated.  
Sec. 1082. Reports modified.

\* \* \* \* \*

**TITLE III—REPORTS BY ALL DEPARTMENTS AND AGENCIES**

Sec. 3001. Reports eliminated.  
Sec. 3002. Reports modified.  
Sec. 3003. Termination of reporting requirements. (109 Stat. 709)

**TITLE I—DEPARTMENTS**

\* \* \* \* \*

**Subtitle E—Department of Energy**

December 21, 1995

4070 REPORTS ELIMINATION AND SUNSET ACT OF 1995

**Sec. 1051. [Reports eliminated.]—(a)**

\* \* \* \* \*

**(b) [Report on Wind Energy Systems.]**—Section 9(a) of the Wind Energy Systems Act of 1980 (42 U.S.C. §9208(a)) is amended—(1) by striking paragraph (3); (2) in paragraph (1) by adding “and” after the semicolon; and (3) in paragraph (2) by striking “; and” and inserting a period. (109 Stat. 716)

EXPLANATORY NOTE

**Reference in the Text.** Section 9(a) of the Wind Energy Systems Act of 1980, Act of September 8, 1980 (Public Law 96-345, 94 Stat. 1139; 42 U.S.C. § 9208(a)) does not appear herein. Other extracts from the Act appear in Volume IV at page 3204.

\* \* \* \* \*

**Sec. 1052. [Reports modified.]—**

\* \* \* \* \*

**(h) [Report on Cost-Effective Ways To Increase Hydropower Production at Federal Water Facilities.]**—Section 2404 of the Energy Policy Act of 1992 (16 U.S.C. § 797 note) is amended—

(1) in subsection (a), by striking “The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army,” and inserting “The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary,”; and

(2) in subsection (b), by striking “the Secretary” and inserting “the Secretary of the Interior, or the Secretary of the Army,”. (109 Stat. 719)

EXPLANATORY NOTE

**Reference in the Text.** Section 2404 of the Energy Policy Act of 1992, Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2776; 16 U.S.C. §797 note) appears in Volume V at page 3766.

\* \* \* \* \*

December 21, 1995

REPORTS ELIMINATION AND SUNSET ACT OF 1995 4071

Subtitle H—Department of the Interior

**Sec. 1081. [Reports eliminated.]—(a) [Report on Audits in Federal Royalty Management System.]**—Section 17(j) of the Mineral Leasing Act (30 U.S.C. § 226(j)) is amended by striking the last sentence.

EXPLANATORY NOTE

**Reference in the Text.** Section 17(j) of the Mineral Leasing Act (30 U.S.C. § 226(j)) does not appear herein.

**(b) [Report on Domestic Mining, Minerals, and Mineral Reclamation Industries.]**—Section 2 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21a) is amended by striking the last sentence.

EXPLANATORY NOTE

**Reference in the Text.** Section 2 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21a) does not appear herein.

**(c) [Report on Phase I of the High Plains States Groundwater Demonstration Project.]**—Section 3(d) of the High Plains States Groundwater Demonstration Program Act of 1983 (43 U.S.C. § 390g-1(d)) is repealed.

EXPLANATORY NOTE

**Reference in the Text.** The High Plains States Groundwater Demonstration Program Act of 1983, Act of September 28, 1984, (Public Law 98-434, 98 Stat. 1675; 43 U.S.C. § 390g-1(d)) appears in Volume V at page 3424.

**(d) [Report on Reclamation Reform Act Compliance.]**—Section 224(g) of the Reclamation Reform Act of 1982 (43 U.S.C. § 390ww(g)) is amended by striking the last 2 sentences.

EXPLANATORY NOTE

**Reference in the Text.** Section 224(g) of the Reclamation Reform Act of 1982, Act of October 12, 1982 (Public Law 97-293, 96 Stat.1263; 43 U.S.C. § 390ww(g)) appears as currently amended in Supplement II at page S1105. An earlier form of the Act appears in Volume IV at page 3334.

\* \* \* \* \*

December 21, 1995

4072 REPORTS ELIMINATION AND SUNSET ACT OF 1995

**(f) [Report on Recreation Use Fees.]**—Section 4(h) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 4601-6a(h)) is repealed.

EXPLANATORY NOTE

**Reference in the Text.** Section 4(h) of the Land and Water Conservation Fund Act of 1965, Act of September 3, 1964 (Public Law 88-578, 78 Stat. 897; 16 U.S.C. § 4601-6a(h)) appears in Volume III at page 1785. Amendments and annotations of the 1964 Act appear in Supplement I at page S359 and Supplement II at page S892.

**Sec. 1082.[ Reports modified.]—(a) [Report on Levels of the Ogallala Aquifer.]**—Title III of the Water Resources Research Act of 1984 (42 U.S.C. § 10301 note) is amended—(1) in section 306, by striking “annually” and inserting “biennially”; and (2) in section 308, by striking “intervals of one year” and inserting “intervals of 2 years”. (109 Stat. 722)

EXPLANATORY NOTE

**Reference in the Text.** Title III of the Water Resources Research Act of 1984, Act of March 22, 1984 (Public Law 98-242, 98 Stat. 97; 42 U.S.C. § 10301 note) appears in Volume V at page 3395.

\* \* \* \* \*

**TITLE III--REPORTS BY ALL DEPARTMENTS AND AGENCIES**

**Sec. 3001. [Reports eliminated.]—(a) [Report on Part-Time Employment.]**—(1) Section 3407 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 34 of title 5, United States Code, is amended by striking out the item relating to section 3407.

**(b) [Semiannual Report on Lobbying.]**—Section 1352 of title 31, United States Code, is amended by—

- (1) striking out subsection (d); and
- (2) redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

**(c) [Reports on Program Fraud and Civil Remedies.]**—(1) Section 3810 of title 31, United States Code, is repealed. (2) The table of sections for chapter 38 of title 31, United States Code, is amended by striking out the item relating to section 3810.

**(d) [Report on Right to Financial Privacy Act.]**—Section 1121 of the Right to Financial Privacy Act of 1978 (12 U.S.C. § 3421) is repealed.

December 21, 1995

REPORTS ELIMINATION AND SUNSET ACT OF 1995 4073

**(e) [ Report on Plans To Convert to the Metric System.]**—Section 12 of the Metric Conversion Act of 1975 (15 U.S.C. § 205j-1) is repealed.

**(f) [Report on Technology Utilization and Intellectual Property Rights.]**—Section 11(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. § 3710(f)) is repealed.

**(g) [Report on Extraordinary Contractual Actions To Facilitate the National Defense.]**—Section 4(a) of the Act entitled “An Act to authorize the making, amendment, and modification of contracts to facilitate the national defense”, approved August 28, 1958 (50 U.S.C. § 1434(a)), is amended by striking out “all such actions taken” and inserting in lieu thereof “if any such action has been taken”.

**(h) [Reports on Detailing Employees.]**—Section 619 of the Treasury, Postal Service, and General Government Appropriations Act, 1993 (Public Law 102-393; 106 Stat. 1769; 5 U.S.C. § 3341) is repealed. (109 Stat. 734)

**Sec. 3002. [Reports modified.]**—Section 552b(j) of title 5, United States Code, is amended to read as follows:

“(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

“(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

“(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

“(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

“(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.”. (109 Stat. 734)

**Sec. 3003. [Termination of reporting requirements.]—(a) [Termination.]**—

**(1) [In general.]**—Subject to the provisions of paragraph (2) of this subsection and subsection (d), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual, or other regular periodic report specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 4 years after the date of the enactment of this Act.  
(109 Stat. 735, 31 U.S.C. § 1113)

**(2) [Exception.]**—The provisions of paragraph (1) shall not apply to any report required under—(A) the Inspector General Act of 1978 (5 U.S.C. App.); or (B) the Chief Financial Officers Act of 1990 (Public Law 101-576), including provisions enacted by the amendments made by that Act.

**(b) [Identification of wasteful reports.]**—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

December 21, 1995

4074 REPORTS ELIMINATION AND SUNSET ACT OF 1995

**(c) [List of Reports.]**—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives for the first session of the One Hundred Third Congress under clause 2 of rule III of the Rules of the House of Representatives (House Document No. 103-7). (109 Stat. 735)

EXPLANATORY NOTE

**Reference in the Text.** References cited in title III of this Act do not appear herein.

\* \* \* \* \*

EXPLANATORY NOTE

**Legislative History.** S. 790, Public Law 104-66 in the 104<sup>th</sup> Congress. Passed the Senate July 17, 1995. Reported in the House from Government Reform and Oversight; H.R. Repts. No. 104-327. Passed the House November 14, 1995, amended. Senate concurred in House amendment with an amendment December 6, 1995. The House concurred in the Senate amendment on December 7, 1995.

April 4, 1996

4075

**FEDERAL AGRICULTURE IMPROVEMENT  
AND REFORM ACT OF 1996**

[Extracts from] an Act to modify the operation of certain agricultural programs. (Act of April 4, 1996, Public Law 104-127, Title III, Subtitle D, § 336(c)(1), (2), and (3); 110 Stat. 1006, 43 U.S.C. § 1592, 1595)

**Section 1. [Short title.]**—This Act may be cited as the "Federal Agriculture Improvement and Reform Act of 1996".

\* \* \* \* \*

Title III-Subtitle D

\* \* \* \* \*

**Sec. 336. (c) [Colorado River Basin Salinity Control Program.]**(1) [In general.]—Section 202 of the Colorado River Basin Salinity Control Act (43 U.S.C. § 1592) is amended by striking subsection (c) and inserting the following:

"(c) [Salinity Control Measures.]—The Secretary of Agriculture shall carry out salinity control measures (including watershed enhancement and cost-share measures with livestock and crop producers) in the Colorado River Basin as part of the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act of 1985."

**(2) [Funds.]**—Section 205 of the Colorado River Basin Salinity Control Act (43 U.S.C. § 1595) is amended—(A) in subsection (a), by striking "pursuant to section 202(c)(2)(C)"; and (B) by adding at the end the following:

"(f) [Funds.] The Secretary may expend funds available in the Basin Funds referred to in this section to carry out cost-share salinity measures in a manner that is consistent with the cost allocations required under this section."

**(3) [Conforming amendment.]**—Section 246(b)(6) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6962(b)(6)) is amended by striking "program" and inserting "measures". (110 Stat. 1006)

\* \* \* \* \*

EXPLANATORY NOTES

**References in the Text.** The Colorado River Basin Salinity Control Act (Act of June 24, 1974, as amended, Public Law 93-320, 88 Stat. 266) referenced above appears in Volume IV at page 2857, and amendments thereto appear in Supplement II at page S1038. The Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6962(b)(6))referenced in subsection 336(c)(3) does not appear herein.

April 4, 1996

#### 4076 FEDERAL AGRICULTURE IMPROVEMENT AND REFORM

**Legislative History.** H.R. 2854 (S. 1541) considered and passed House February 28, 29, Public Law 104-127 in the 104<sup>th</sup> Congress. S. 1541 considered and passed Senate January 31, February 1, 6, 7, 1996. Reported in House from Agriculture; H.R. Repts. Nos. 104-462, Pt. 1 and 104-494 (Conference). H.R. 2854 considered and passed Senate, amended, in lieu of S. 1541, March 12, 1996. Senate considered conference report, March 27, 1996. Senate and House agreed to conference report, March 28, 1996.

May 15, 1996

4077

## **TRINITY RIVER BASIN FISH AND WILDLIFE MANAGEMENT REAUTHORIZATION ACT OF 1995**

An Act to amend the Trinity River Basin Fish and Wildlife Management Act of 1984, to extend for three years the availability of moneys for the restoration of fish and wildlife in the Trinity River, and for other purposes. (Act of May 15, 1996, Public Law 104-143, 110 Stat. 1338)

**Section 1. [Short title.]**—This Act may be cited as the "Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995".

**Sec. 2. [Clarification of findings.]**—Section 1 of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2721), as amended, is amended—

(1) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively;

(2) by adding after paragraph (4) the following: "(5) Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration;"; and

(3) by amending paragraph (7), as so redesignated, to read as follows:

"(7) the Secretary requires additional authority to implement a management program, in conjunction with other appropriate agencies, to achieve the long-term goals of restoring fish and wildlife populations in the Trinity River Basin, and, to the extent these restored populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program will aid in the resumption of commercial, including ocean harvest, and recreational fishing activities." (110 Stat. 1338)

### EXPLANATORY NOTE

**Reference in the Text.** The Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (Public Law 98-541, 98 Stat. 2721) referred to in each section of this Act is amended and renamed by this Act. The 1984 Act, as amended, appears in Volume V at page 3439.

**Sec. 3. [Changes to management program.]**—(a) **[Ocean fish levels.]**—Section 2(a) of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2722), as amended, is amended—

(1) in the matter preceding paragraph (1)—

May 15, 1996

4078 TRINITY RIVER BASIN FISH AND WILDLIFE MGMT

(A) by inserting ", in consultation with the Secretary of Commerce where appropriate," after "Secretary"; and

(B) by adding the following after "such levels.": "To the extent these restored fish and wildlife populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program is intended to aid in the resumption of commercial, including ocean harvest, and recreational fishing activities."

**(b) [Fish habitats in the Klamath River.]**—Paragraph (1)(A) of such section (98 Stat. 2722) is amended by striking "Weitchpec;" and inserting "Weitchpec and in the Klamath River downstream of the confluence with the Trinity River;"

**(c) [Trinity River fish hatchery.]**—Paragraph (1)(C) of such section (98 Stat. 2722) is amended by inserting before the period the following: ", so that it can best serve its purpose of mitigation of fish habitat loss above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin".

**(d) [Addition of Indian tribes.]**—Section 2(b)(2) of such Act (98 Stat. 2722) is amended by striking "tribe" and inserting "tribes". (110 Stat. 1339)

**Sec. 4. [Additions to task force]—(a) [In general.]**—Section 3(a) of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2722), as amended, is amended—

(1) by striking "fourteen" and inserting "nineteen";

(2) by striking "United States Soil Conservation Service" in paragraph (10) and inserting "Natural Resources Soil and Conservation Service"; and

(3) by inserting after paragraph (14) the following:

"(15) One individual to be appointed by the Yurok Tribe.

"(16) One individual to be appointed by the Karuk Tribe.

"(17) One individual to represent commercial fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the Pacific Coast Federation of Fishermen's Associations.

"(18) One individual to represent sport fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the California Advisory Committee on Salmon and Steelhead Trout.

"(19) One individual to be appointed by the Secretary, in consultation with the Secretary of Agriculture, to represent the timber industry."

**(b) [Coordination among certain entities.]**—Section 3 of such Act (98 Stat. 2722) is further amended by adding at the end thereof the following new subsection:

"(d) Task Force actions or management on the Klamath River from Weitchpec downstream to the Pacific Ocean shall be coordinated with, and conducted with the full knowledge of, the Klamath River Basin Fisheries Task Force and the Klamath Fishery Management Council, as established under Public Law 99-552. The Secretary shall appoint a designated representative to ensure such

May 15, 1996

TRINITY RIVER BASIN FISH AND WILDLIFE MGMT 4079

coordination and the exchange of information between the Trinity River Task Force and these two entities."

EXPLANATORY NOTE

**Reference in the Text.** The Act of October 27, 1986 (Public Law 99-552, 100 Stat. 3080) referred to in subsection 4(b) is an Act to provide for the restoration of the fishery resources in the Klamath River Basin. The 1986 Act appears in Volume V at page 3520.

**(c) [Task Force reimbursement.]**—Section 3(c)(2) of such Act (98 Stat. 2723) is amended by adding at the end the following: "Members of the Task Force who are not full-time officers or employees of the United States, the State of California (or a political subdivision thereof), or an Indian tribe, may be reimbursed for such expenses as may be incurred by reason of their service on the Task Force, as consistent with applicable laws and regulations."

**(d) [Effective date.]**—The amendments made by subsection (a) shall apply with respect to actions taken by the Trinity River Basin Fish and Wildlife Task Force on and after 120 days after the date of the enactment of this Act. (110 Stat. 1340)

**Sec. 5. [Appropriations.]—(a) [Extension of authorization.]**—Section 4(a) of the Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2723), as amended, is amended—

(1) in paragraph (1), by striking "October 1, 1995" and inserting in lieu thereof "October 1, 1998"; and

(2) in paragraph (2), by striking "ten-year" and inserting in lieu thereof "13-year".

**(b) [In-kind services—Overhead—Financial and audit reports.]**—Section 4 of such Act (98 Stat. 2724) is amended—

(1) by designating subsection (d) as subsection (h); and (2) by inserting after subsection (c) the following new subsections:

"(d) The Secretary is authorized to accept in-kind services as payment for obligations incurred under subsection (b)(1).

"(e) Not more than 20 percent of the amounts appropriated under subsection (a) may be used for overhead and indirect costs. For the purposes of this subsection, the term overhead and indirect costs means costs incurred in support of accomplishing specific work activities and jobs. Such costs are primarily administrative in nature and are such that they cannot be practically identified and charged directly to a project or activity and must be distributed to all jobs on an equitable basis. Such costs include compensation for administrative staff, general staff training, rent, travel expenses, communications, utility charges, miscellaneous materials and supplies, janitorial services, depreciation and replacement expenses on capitalized equipment. Such costs do not include

May 15, 1996

4080 TRINITY RIVER BASIN FISH AND WILDLIFE MGMT

inspection and design of construction projects and environmental compliance activities, including (but not limited to) preparation of documents in compliance with the National Environmental Policy Act of 1969.

"(f) Not later than December 31 of each year, the Secretary shall prepare reports documenting and detailing all expenditures incurred under this Act for the fiscal year ending on September 30 of that same year. Such reports shall contain information adequate for the public to determine how such funds were used to carry out the purposes of this Act. Copies of such reports shall be submitted to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

"(g) The Secretary shall periodically conduct a programmatic audit of the in-river fishery monitoring and enforcement programs under this Act and submit a report concerning such audit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate."

**(c) [Authority to seek appropriations.]**—Section 4 of such Act, as amended by subsection (b) of this section, is further amended by inserting after subsection (h) the following new subsection:

"(I) Beginning in the fiscal year immediately following the year the restoration effort is completed and annually thereafter, the Secretary is authorized to seek appropriations as necessary to monitor, evaluate, and maintain program investments and fish and wildlife populations in the Trinity River Basin for the purpose of achieving long-term fish and wildlife restoration goals."

**Sec. 6. [No Indian rights affected.]**—The Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2721), as amended, is further amended by inserting at the end thereof the following:

"Sec. 5. [Preservation of rights.]—Nothing in this Act shall be construed as establishing or affecting any past, present, or future rights of any Indian or Indian tribe or any other individual or entity."

**Sec. 7. [Short title of 1984 Act.]**—The Act entitled "An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes", approved October 24, 1984 (98 Stat. 2721), as amended by section 6 of this Act, is further amended by adding at the end the following: "Sec. 6. [Short Title.]—This Act may be cited as the Trinity River Basin Fish and Wildlife Management Act of 1984." (110 Stat. 1341)

EXPLANATORY NOTES

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

**Legislative History.** H.R. 2243, Public Law 104-143 in the 104<sup>th</sup> Congress. Reported in the House from Resources; H.R. Rept. No. 104-

395. Reported in the Senate from Environment and Public Works; S. Rept. No. 104-253. Passed House December 12, 1995. Passed Senate May 3, 1996.

## **WATER RESOURCES RESEARCH ACT OF 1984, AMENDMENTS**

An Act to amend the Water Resources Research Act of 1984 to extend the authorizations of appropriations through fiscal year 2000, and for other purposes. (Act of May 24, 1996, Public Law 104-147, 110 Stat. 1375; 42 U.S.C. 10301)

**Section 1. [Findings.]**—Section 102 of the Water Resources Research Act of 1984 (42 U.S.C. 10301) is amended—

(1) in paragraph (2), by inserting ", productivity of natural resources and agricultural systems," after "environmental quality";

(2) in paragraph (6), by striking "and" at the end;

(3) in paragraph (7), by striking the period at the end and inserting "; and";  
and

(4) by adding at the end the following:

"(8) long-term planning and policy development are essential to ensure the availability of an abundant supply of high quality water for domestic and other uses; and

"(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources."

### EXPLANATORY NOTE

**Reference in the Text.** The Water Resources Research Act of 1984, Act of March 22, 1984 (Public Law 98-242, 98 Stat. 97, as amended) appears in Volume V at page 3381.

**Sec. 2. [Purpose.]**—Section 103 of the Water Resources Research Act of 1984 (42 U.S.C. § 10302) is amended—

(1) in paragraph (5)—(A) by striking "to"; and (B) by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting "; and";  
and

(3) by adding at the end the following:

"(7) encourage long-term planning and research to meet future water management, quality, and supply challenges." (110 Stat. 1376)

**Sec. 3. [Grants-Matching funds.]**—Section 104(c) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(c)) is amended by striking "one non-Federal dollar" and all that follows through "thereafter" and inserting "2 non-Federal dollars for every 1 Federal dollar".

**Sec. 4. [General authorizations of appropriations.]**—Section 104(f)(1) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(f)(1)) is amended by striking "of \$10,000,000 for each of the fiscal years ending September 30, 1989, through September 30, 1995," and inserting "of \$5,000,000 for fiscal year 1996,

May 24, 1996

4082 WATER RESOURCES RESEARCH ACT OF 1984

\$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000".

**Sec. 5. [Authorization of appropriations for research focused on water problems of interstate nature.]**—The first sentence of section 104(g)(1) of the Water Resources Research Act of 1984 (42 U.S.C. § 10303(g)(1)) is amended by striking "of \$5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995" and inserting "of \$3,000,000 for each of fiscal years 1996 through 2000".

**Sec. 6. [Coordination.]**—Section 104 of the Water Resources Research Act of 1984 (42 U.S.C. § 10303) is amended by adding at the end the following:

"(h) Coordination.—

"(1) In general.—To carry out this Act, the Secretary—

"(A) shall encourage other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to use and take advantage of the expertise and capabilities that are available through the institutes established by this section, on a cooperative or other basis;

"(B) shall encourage cooperation and coordination with other Federal programs concerned with water resources problems and issues;

"(C) may enter into contracts, cooperative agreements, and other transactions without regard to section 3709 of the Revised Statutes (41 U.S.C. § 5);

"(D) may accept funds from other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to pay for and add to grants made, and contracts entered into, by the Secretary;

"(E) may promulgate such regulations as the Secretary considers appropriate; and

"(F) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this Act.

"(2) Report.—The Secretary shall report to Congress annually on coordination efforts with other Federal departments, agencies, and instrumentalities under paragraph (1).

"(3) Relationship to State rights.—Nothing in this Act shall preempt the rights and authorities of any State with respect to its water resources or management of those resources." (110 Stat. 1377)

EXPLANATORY NOTE

**Legislative history.** H.R. 1743, Public Law 104-147 in the 104<sup>th</sup> Congress. Reported in the House from Committee on Resources. Passed the House October 17, 1995; H.R. Rept. No. 104-242. Reported in the Senate from the Environment and Public Works. Passed the Senate May 3, 1996; S. Rept. 104-252. House concurred in Senate amendment May 14, 1996.

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1997**

[Extracts from] an Act making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes. (Act of September 30, 1996, Public Law 104-206, 110 Stat. 2984)

\* \* \* \* \*

**TITLE II—DEPARTMENT OF THE INTERIOR**

\* \* \* \* \*

**BUREAU OF RECLAMATION**

\* \* \* \* \*

**CONSTRUCTION PROGRAM**

\* \* \* \* \*

**[Emergency Drought Relief Act of 1991.]**—Section 301 of Public Law 102-250, Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2241.), is amended by inserting "1996, and 1997" in lieu of "and 1996":

\* \* \* \* \*

**[Utilizing funds appropriated for the Tucson Aqueduct System Reliability Investigation.]**—The Bureau of Reclamation is directed to complete, by the end of fiscal year 1997, the environmental impact statement being conducted on the proposed surface reservoir. The Bureau of Reclamation is further directed to work with the City of Tucson on any outstanding issues related to the preferred alternative. (110 Stat. 2992)

EXPLANATORY NOTE

**References in the Text.** Section 301 of the Reclamation States Emergency Drought Relief Act of 1991, Act of March 5, 1992 (Public Law 102-250, 103 Stat. 58; 43 U.S.C. 2241.) appears in Volume V at page 3738.

\* \* \* \* \*

September 30, 1996

4084 ENERGY AND WATER APPROPRIATIONS ACT, 1997

TITLE V—GENERAL PROVISIONS

\* \* \* \* \*

**Sec. 503. (a) [Kesterson Reservoir Cleanup Program]—**

\* \* \* \* \*

(b) The costs of the Kesterson Reservoir Cleanup Program and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected until fully repaid pursuant to the "Cleanup Program-Alternative Repayment Plan" and the "SJVDP-Alternative Repayment Plan" described in the report entitled "Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995", prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal Reclamation law. (110 Stat. 3002)

\* \* \* \* \*

**Sec. 505. [Public Law 101-514 amended.]—**Public Law 101-514, the Energy and Water Development Appropriations Act, 1991, is amended effective September 30, 1997 or upon operation of the temperature control device, by striking the proviso under the heading "Construction, Rehabilitation, Operation and Maintenance, Western Area Power Administration". (110 Stat. 3003)

EXPLANATORY NOTE

**References in the Text.** The Energy and Water Development Appropriations Act, 1991, Act of November 5, 1990 (Public Law 101-514, 104 Stat. 2074) appears in Volume V at page 3659.

**Sec. 506. [Water service contracts with Bostwick District and Frenchman-Cambridge District extended.]—**The Secretary of the Interior shall extend the water service contracts for the following projects, entered into by the Secretary of the Interior under subsection (e) of section 9 of the Reclamation Project Act of 1939 (43 U.S.C. 485h) and section 9(c) of the Act of December 22, 1944 (58 Stat. 891, chapter 665), for a period of 1 additional year after the dates on which each of the contracts, respectively, would expire but for this section:

(1) The Bostwick District (Kansas portion), Missouri River Basin Project, consisting of the project constructed and operated under the Act of December

September 30, 1996

ENERGY AND WATER APPROPRIATIONS ACT, 1997 4085

22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Republic County, Jewell County, and Cloud County, Kansas.

(2) The Bostwick District (Nebraska portion), Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Harlan County, Franklin County, Webster County, and Nuckolls County, Nebraska.

(3) The Frenchman-Cambridge District, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Chase County, Frontier County, Hitchcock County, Furnas County, and Harlan County, Nebraska. (110 Stat. 3003)

EXPLANATORY NOTE

**References in the Text.** Subsection (e) of section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939 (ch. 418, 53 Stat. 1196; 43 U.S.C. 485h) appears in Volume I at page 635. Amendments and annotations to the 1939 Act appear in Supplement I at page S124.

Section 9(c) of the Act of December 22, 1944 (ch. 665, 58 Stat. 891), appears in Volume I at page 807. Amendments and annotations to the 1944 Act appear in Supplement I at page S147 and in Supplement II at page S861.

\* \* \* \* \*

**Sec. 514. [Lost Creek Dam Lake Project renamed.]**—The dam located at mile 158.6 on the Rogue River in Jackson County, Oregon, and commonly known as the Lost Creek Dam Lake Project, shall be known and designated as the "William L. Jess Dam and Intake Structure". Any reference in a law, map, regulation, document, paper, or other record of the United States to the dam referred to as Lost Creek Dam Lake Project, shall be deemed to be a reference to the "William L. Jess Dam and Intake Structure". (110 Stat. 3006)

\* \* \* \* \*

**[Short title.]**—This Act may be cited as the "Energy and Water Development Appropriations Act, 1997". (110 Stat. 3007)

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 Appropriations Acts.** Provisions which are repeated in two or more appropriation

acts appear herein only in the act in which such provisions are first used.

**Legislative History.** H.R. 3816 (S. 1959), Public Law 104-206 in the 104<sup>th</sup> Congress. Reported in the House from Appropriations; H.R. Repts. 104-679 and

September 30, 1996

**4086 ENERGY AND WATER APPROPRIATIONS ACT, 1997**

104-782 (Conference). Reported in the Senate from Appropriations; S. Repts. 104-320. Passed House July 25, 1996. Passed Senate, amended, in lieu of S. 1959 July 30,

1996. House agreed to conference report September 12, 1996. Senate agreed to conference report September 17, 1996.

**RECLAMATION RECYCLING AND WATER  
CONSERVATION ACT OF 1996**

An Act to make amendments to the Reclamation Wastewater and Groundwater Study and Facilities Act (Act of October 30, 1992; Public Law 102-575, Title XVI; 106 Stat. 4664; 43 U.S.C. 390h et seq.), and for other purposes. (Act of October 9, 1996, Public Law 104-266, 110 Stat. 3289; 43 U.S.C. § 390h.)

**Section 1. [Short title.]**—This Act may be cited as the "Reclamation Recycling and Water Conservation Act of 1996". (110 Stat. 3290)

**Sec. 2. [Water recycling projects.]**—(a) **[In general.]**—The Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. § 390h et seq.) is amended (1) by redesignating sections 1615, 1616, and 1617 as sections 1631, 1632, and 1633, respectively, and (2) by inserting after section 1614 the following new sections:

"Sec. 1615. [North San Diego County Area Water Recycling Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the North San Diego County Area Water Recycling Project, consisting of projects to reclaim and reuse water within service areas of the San Elijo Joint Powers Authority, the Leucadia County Water District, the City of Carlsbad, and the Olivenhain Municipal Water District, California. (43 U.S.C. §§ 390h-13, 390h-14, 390h-15.)

EXPLANATORY NOTE

**Reference in the Text.** Title XVI of the U.S.C. 390h et seq.) amended by sections 2 Reclamation Projects Authorization and through 7 of this Act appears, as amended, in Adjustment Act of 1992, Act of October 30, Volume V at page 3875. 1992 (Public Law 102-575, 106 Stat. 4600; 43

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12a.)

"Sec. 1616. [Calleguas Municipal Water District Recycling Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Calleguas Municipal Water District Recycling Project to reclaim and reuse water in the service area of the Calleguas Municipal Water District in Ventura County, California.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

October 9, 1996

4088 RECYCLING AND WATER CONSERVATION ACT

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a) (43 U.S.C. § 390h-12b.)

"Sec. 1617. [Central Valley Water Recycling Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Central Valley Water Recycling Project to reclaim and reuse water in the service areas of the Central Valley Reclamation Facility and the Salt Lake County Water Conservancy District in Utah.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (110 Stat. 3291; 43 U.S.C. § 390h-12c.)

"Sec. 1618. [St. George Area Water Recycling Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the St. George Area Water Recycling Project to reclaim and reuse water in the service area of the Washington County Water Conservancy District in Utah.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12d.)

"Sec. 1619. [Watsonville Area Water Recycling Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the City of Watsonville, California, is authorized to participate in the design, planning, and construction of the Watsonville Area Water Recycling Project to reclaim and reuse water in the Pajaro Valley in Santa Cruz County, California.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12e.)

"Sec. 1620. [Southern Nevada Water Recycling Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Southern Nevada Water Recycling Project to reclaim and reuse water in the service area of the Southern Nevada Water Authority in Clark County, Nevada.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12f.)

"Sec. 1621. [Albuquerque Metropolitan Area Water Reclamation and Reuse Project.]—(a) [Authorization.]—The Secretary, in cooperation with the city of

October 9, 1996

RECYCLING AND WATER CONSERVATION ACT 4089

Albuquerque, New Mexico, is authorized to participate in the planning, design, and construction of the Albuquerque Metropolitan Area Water Reclamation and Reuse Project to reclaim and reuse industrial and municipal wastewater and reclaim and use naturally impaired ground water and nonpotable surface water in the Albuquerque metropolitan area.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (110 Stat. 3292, 111 Stat. 1339; 43 U.S.C. § 390h-12g.)

EXPLANATORY NOTE

**1997 Amendment.** Section 506 of the Act of October 13, 1997 Public Law 105-62 (111 Stat. 1339) amended "Sec. 1621 by—

(1) striking "study" in the section title and in subsection (a), and inserting "project" into the title and in subsection (a);

(2) inserting in subsection (a) "planning,

design, and construction of the" following "to participate in the"; and

(3) inserting in subsection (a) "and nonpotable surface water" following "impaired ground water". The 1997 Act appears in Volume V at page 4114.

"Sec. 1622. [El Paso Water Reclamation and Reuse Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the El Paso Water Reclamation and Reuse Project to reclaim and reuse wastewater in the service area of the El Paso Water Utilities Public Service Board, El Paso, Texas.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12h.)

"Sec. 1623. [Reclaimed water in Pasadena.]—"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the City of Pasadena, California, reclaimed water project to obtain, store, and use reclaimed water in Pasadena and its service area, as well as neighboring communities.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12i.)

"Sec. 1624. [Phase 1 of The Orange County Regional Water Reclamation Project.]—"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of phase 1 of the Orange County Regional Water

October 9, 1996

4090 RECYCLING AND WATER CONSERVATION ACT

Reclamation Project, to reclaim and reuse water within the service area of the Orange County Water District in California.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12j.)

"Sec. 1625. [City of West Jordan Water Reuse Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the City of West Jordan, Utah, is authorized to participate in the design, planning, and construction of the City of West Jordan Water Reuse Project to recycle and reuse water in its service area from the South Valley Water Reclamation Facility Discharge Waters in Utah.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). ( 110 Stat. 3293; 43 U.S.C. § 390h-12k.)

"Sec. 1626. [Hi-Desert Water District in Yucca Valley, California Wastewater Collection and Reuse Facility.]—"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the Hi-Desert Water District in Yucca Valley, California wastewater collection and reuse facility.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12l.)

"Sec. 1627. [Mission Basin Brackish Groundwater Desalting Demonstration Project.]—"(a) [Authorization.]—The Secretary, in cooperation with the City of Oceanside, is authorized to participate in the design, planning, and construction of a 3,000,000 gallon per day expansion of the Mission Basin Brackish Groundwater Desalting Demonstration Project in Oceanside, California.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12m.)

"Sec. 1628. [Treatment of effluent from the sanitation districts of Los Angeles County through The City of Long Beach.]—"(a) [Authorization.]—The Secretary, in cooperation with the Water Replenishment District of Southern California, the Orange County Water District in the State of California, and other appropriate authorities, is authorized to participate in the design, planning, and construction of water reclamation and reuse projects to treat approximately 10,000 acre-feet per year of effluent from the sanitation districts of Los Angeles County through the city of Long Beach.

October 9, 1996

RECYCLING AND WATER CONSERVATION ACT 4091

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (110 Stat. 3294; 43 U.S.C. § 390h-12n.)

"Sec. 1629. [San Joaquin Area Water Recycling and Reuse Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with the appropriate State and local authorities, is authorized to participate in the design, planning, and construction of the San Joaquin Area Water Recycling and Reuse Project, in cooperation with the City of Tracy, and consisting of participating projects which will reclaim and reuse water within the County of San Joaquin in California.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a). (43 U.S.C. § 390h-12o.)

"Sec. 1630. [Tooele Wastewater Treatment and Reuse Project.]—

"(a) [Authorization.]—The Secretary, in cooperation with Tooele City, Utah, is authorized to participate in the design, planning, and construction of the Tooele Wastewater Treatment and Reuse Project.

"(b) [Cost Share.]—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost.

"(c) [Limitation.]—The Secretary shall not provide funds for the operation or maintenance of a project described in subsection (a)." (43 U.S.C. § 390h-12p.)

**(b) [Conforming amendments.]—**(1) Section 1631 of such Act, as redesignated by subsection (a)(1), is amended by striking out "1614" and inserting in lieu thereof "1630". (43 U.S.C. § 390h-13.)

(2) Section 1632(c) of such Act, as redesignated by subsection (a)(1), is amended by striking out "section 1617" and inserting in lieu thereof "section 1633". (43 U.S.C. § 390h-14.)

(3) Section 1633 of such Act, as redesignated by subsection (a)(1), is amended by striking out "section 1616" and inserting in lieu thereof "section 1632". (43 U.S.C. § 390h-15.)

**(c) [Clerical amendments.]—**The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 is amended—(1) by redesignating the items relating to sections 1615, 1616, and 1617 as items relating to sections 1631, 1632, and 1633, respectively, and (2) by inserting after the item relating to section 1614 the following new items:

"Sec. 1615. North San Diego County Area Water Recycling Project.

"Sec. 1616. Calleguas Municipal Water District Recycling Project.

"Sec. 1617. Central Valley Water Recycling Project.

"Sec. 1618. St. George Area Water Recycling Project.

"Sec. 1619. Watsonville Area Water Recycling Project.

October 9, 1996

4092 RECYCLING AND WATER CONSERVATION ACT

"Sec. 1620. Southern Nevada Water Recycling Project.

"Sec. 1621. Albuquerque Metropolitan Area Water Reclamation and Reuse Study.

"Sec. 1622. El Paso Water Reclamation and Reuse Project.

"Sec. 1623. Reclaimed Water in Pasadena.

"Sec. 1624. Phase 1 of the Orange County Regional Water Reclamation Project.

"Sec. 1625. City of West Jordan Water Reuse Project.

"Sec. 1626. Hi-Desert Water District in Yucca Valley, California Wastewater Collection and Reuse Facility.

"Sec. 1627. Mission Basin Brackish Groundwater Desalting Demonstration Project. (110 Stat. 3295)

"Sec. 1628. Treatment of effluent from the sanitation districts of Los Angeles County through the City of Long Beach.

"Sec. 1629. San Joaquin Area Water Recycling and Reuse Project.

"Sec. 1630. Tooele Wastewater Treatment and Reuse Project."

**Sec. 3. [Appraisal investigations.]**—Section 1603(b) of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. § 390h-1(b)) is amended in the matter preceding paragraph (1) by inserting "by the Secretary or the non-Federal project sponsor" after "undertaken".

**Sec. 4. [Feasibility studies.]**—Section 1604(c) of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. § 390h-2(c)) is amended—

(1) in the matter preceding paragraph (1), by striking "authorized" and inserting "conducted by the Secretary or the non-Federal project sponsor";

(2) in paragraph (3)—

(A) by inserting "at least two alternative" after "(3)",

(B) by striking "and" after "measures" and inserting "or", and

(C) by inserting "for the project under consideration" after "reuse"; (3) in paragraph (4), by striking "and," at the end;

(4) in paragraph (5), by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by adding at the end the following: "(C) reduce the demand on existing Federal water supply facilities;"; and

(5) by adding at the end the following: "(6) the market or dedicated use for reclaimed water in the project's service area;" and "(7) the financial capability of the non-Federal project sponsor to fund its proportionate share of the project's construction costs on an annual basis."

**Sec. 5. [Desalination research and development project.]**—Section 1605 of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. § 390h-3) is amended—

(1) by designating the existing text as subsection (a); and (2) by adding at the end the following:

October 9, 1996

RECYCLING AND WATER CONSERVATION ACT 4093

"(b)(1) The Secretary, in cooperation with the city of Long Beach, the Central Basin Municipal Water District, and the Metropolitan Water District of Southern California may participate in the design, planning, and construction of the Long Beach Desalination Research and Development Project in Los Angeles County, California.

"(2) The Federal share of the cost of the project described in paragraph (1) shall not exceed 50 percent of the total.

"(3) The Secretary shall not provide funds for the operation or maintenance of the project described in paragraph (1).

"(c)(1) The Secretary, in cooperation with the Southern Nevada Water Authority, may participate in the design, planning, and construction of the Las Vegas Area Shallow Aquifer Desalination Research and Development Project in Clark County, Nevada.

"(2) The Federal share of the cost of the project described in paragraph (1) shall not exceed 50 percent of the total.

"(3) The Secretary shall not provide funds for the operation or maintenance of the project described in paragraph (1). (110 Stat. 3296)

"(d) A Federal contribution in excess of 25 percent for a project under this section may not be made until after the Secretary determines that the project is not feasible without such Federal contribution."

**Sec. 6. [San Francisco area water reclamation study.]**—Section 1611(c) of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. § 390h-9(c).) is amended by striking "four" and inserting "five".

**Sec. 7. [Authorization of appropriations.]**—Section 1631 of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. § 390h-13.), as amended by section 2 of this Act, is amended by inserting "(a)" before "There are authorized" and by adding at the end the following:

"(b)(1) Funds may not be appropriated for the construction of any project authorized by this title until after—

"(A) an appraisal investigation and a feasibility study that complies with the provisions of sections 1603(b) or 1604(c), as the case may be, have been completed by the Secretary or the non-Federal project sponsor;

"(B) the Secretary has determined that the non-Federal project sponsor is financially capable of funding the non-Federal share of the project's costs; and

"(C) the Secretary has approved a cost-sharing agreement with the non-Federal project sponsor which commits the non-Federal project sponsor to funding its proportionate share of the project's construction costs on an annual basis.

"(2) The requirements of paragraph (1) shall not apply to those projects authorized by this title for which funds were appropriated prior to January 1, 1996.

October 9, 1996

4094 RECYCLING AND WATER CONSERVATION ACT

"(c) [Notification.]—The Secretary shall notify the Committees on Resources and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate within 30 days after the signing of a cost-sharing agreement pursuant to subsection (b) that such an agreement has been signed and that the Secretary has determined that the non-Federal project sponsor is financially capable of funding the project's non-Federal share of the project's costs.

"(d)(1) Notwithstanding any other provision of this title and except as provided by paragraph (2), the Federal share of the costs of each of the individual projects authorized by this title shall not exceed \$20,000,000 (October 1996 prices).

"(2) In the case of any project authorized by this title for which construction funds were appropriated before January 1, 1996, the Federal share of the cost of such project may not exceed the amount specified as the "total Federal obligation" for that project in the budget justification made by the Bureau of Reclamation for fiscal year 1997, as contained in part 3 of the report of the hearing held on March 27, 1996, before the Subcommittee on Energy and Water Development of the Committee on Appropriations of the House of Representatives." (110 Stat. 3297)

EXPLANATORY NOTES

**Codified.** This Act is codified in the U.S. Code as cited above. House from Committee on Resources. H. Rept. No. 104-703. Considered and passed House September 4, 1996. Considered and passed Senate September 28, 1996.

**Legislative History.** H.R. 3660, Public Law 104-266 in the 104<sup>th</sup> Congress. Reported in the

October 11, 1996

4095

## THE CENTRAL UTAH PROJECT COMPLETION ACT AMENDMENTS

An Act to amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes. (Act of October 11, 1996, Public Law 104-286, 110 Stat. 3387)

**Section 1 [Prepayment of certain repayment contracts between the United States and the Central Utah Water Conservancy District.]**—Section 210 of the Central Utah Project Completion Act (106 Stat. 4624) is amended by striking the second sentence and inserting the following: "The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District. The District shall exercise its right to prepayment pursuant to this section by the end of fiscal year 2002. Nothing in this section authorizes or terminates the authority to use tax exempt bond financing for this prepayment." (110 Stat. 3387)

### EXPLANATORY NOTES

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

**Reference in the Text.** Section 210 of the Central Utah Project Completion Act, Act of October 30, 1992 (Title II of Public Law 102-575, 106 Stat. 4605) appears in Volume V at page 3836.

**Legislative History.** H.R. 1823, Public Law

104-286 in the 104<sup>th</sup> Congress. Reported in the House from the Resources; House Report No. 104-531. Considered and passed the House April 30, 1996. Reported in the Senate from Energy and Natural Resources, Senate Report No. 104-300. Considered and passed the Senate September 28, 1996.

## WATER DESALINATION ACT OF 1996

An Act to authorize the Secretary of the Interior to conduct studies regarding the desalination of water and water reuse, and for other purposes. (Act of October 11, 1996, Public Law 104-298, 110 Stat. 3622, 42 U.S.C. § 10301)

**Section 1. [Short title.]**—This Act may be cited as the "Water Desalination Act of 1996".

**Sec. 2. [Definitions.]**—As used in this Act:

(1) **[Desalination or desalting.]**—The terms "desalination" or "desalting" mean the use of any process or technique for the removal and, when feasible, adaptation to beneficial use, of organic and inorganic elements and compounds from saline or biologically impaired waters, by itself or in conjunction with other processes.

(2) **[Saline water.]**—The term "saline water" means sea water, brackish water, and other mineralized or chemically impaired water.

(3) **[United States.]**—The term "United States" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(4) **[Usable water.]**—The term "usable water" means water of a high quality suitable for environmental enhancement, agricultural, industrial, municipal, and other beneficial consumptive or nonconsumptive uses.

(5) **[Secretary.]**—The term "Secretary" means the Secretary of the Interior. (110 Stat. 3622; 42 U.S.C. § 10301)

**Sec. 3. [Authorization of research and studies.]**—(a) **[In general.]**—In order to determine the most cost-effective and technologically efficient means by which usable water can be produced from saline water or water otherwise impaired or contaminated, the Secretary is authorized to award grants and to enter into contracts, to the extent provided in advance in appropriation Acts, to conduct, encourage, and assist in the financing of research to develop processes for converting saline water into water suitable for beneficial uses. Awards of research grants and contracts under this section shall be made on the basis of a competitive, merit-reviewed process. Research and study topics authorized by this section include—

- (1) investigating desalination processes;
- (2) ascertaining the optimum mix of investment and operating costs;
- (3) determining the best designs for different conditions of operation;
- (4) investigating methods of increasing the economic efficiency of desalination processes through dual-purpose co-facilities with other processes involving the use of water;

October 11, 1996

WATER DESALINATION ACT OF 1996

4097

(5) conducting or contracting for technical work, including the design, construction, and testing of pilot systems and test beds, to develop desalting processes and concepts;

(6) studying methods for the recovery of byproducts resulting from desalination to offset the costs of treatment and to reduce environmental impacts from those byproducts; and

(7) salinity modeling and toxicity analysis of brine discharges, cost reduction strategies for constructing and operating desalination facilities, and the horticultural effects of desalinated water used for irrigation.

**(b) [Project recommendations and reports to the Congress.]**—As soon as practicable and within three years after the date of enactment of this Act, the Secretary shall recommend to Congress desalination demonstration projects or full-scale desalination projects to carry out the purposes of this Act and to further evaluate and implement the results of research and studies conducted under the authority of this section. Recommendations for projects shall be accompanied by reports on the engineering and economic feasibility of proposed projects and their environmental impacts.

**(c) [Authority to engage other entities.]**—In carrying out research and studies authorized in this section, the Secretary may engage the necessary personnel, industrial or engineering firms, Federal laboratories, water resources research and technology institutes, other facilities, and educational institutions suitable to conduct investigations and studies authorized under this section.

**(d) [Alternative technologies.]**—In carrying out the purposes of this Act, the Secretary shall ensure that at least three separate technologies are evaluated and demonstrated for the purposes of accomplishing desalination. (110 Stat. 3623; 42 U.S.C. § 10301)

**Sec. 4. [Desalination demonstration and development.]**—**(a) [In General.]**—In order to further demonstrate the feasibility of desalination processes investigated either independently or in research conducted pursuant to section 3, the Secretary shall administer and conduct a demonstration and development program for water desalination and related activities, including the following:

**(1) [Desalination plants and modules.]**—Conduct or contract for technical work, including the design, construction, and testing of plants and modules to develop desalination processes and concepts.

**(2) [Byproducts.]**—Study methods for the marketing of byproducts resulting from the desalting of water to offset the costs of treatment and to reduce environmental impacts of those byproducts.

**(3) [Economic surveys.]**—Conduct economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various locations by desalination processes compared to other methods.

**(b) [Cooperative agreements.]**—Federal participation in desalination activities may be conducted through cooperative agreements, including cost-sharing agreements, with non-Federal public utilities and State and local governmental agencies and other entities, in order to develop recommendations for Federal participation in processes and plants utilizing desalting technologies for the production of water. (110 Stat. 3624, 42 U.S.C. § 10301)

**Sec. 5. [Availability of information.]**—All information from studies sponsored or funded under authority of this Act shall be considered public information.

**Sec. 6. [Technical and administrative assistance.]**—The Secretary may—

(1) accept technical and administrative assistance from States and public or private agencies in connection with studies, surveys, location, construction, operation, and other work relating to the desalting of water, and

(2) enter into contracts or agreements stating the purposes for which the assistance is contributed and providing for the sharing of costs between the Secretary and any such agency. (42 U.S.C. § 10301)

**Sec. 7. [Cost sharing—Regulations.]**—The Federal share of the cost of a research, study, or demonstration project or a desalination development project or activity carried out under this Act shall not exceed 50 percent of the total cost of the project or research or study activity. A Federal contribution in excess of 25 percent for a project carried out under this Act may not be made unless the Secretary determines that the project is not feasible without such increased Federal contribution. The Secretary shall prescribe appropriate procedures to implement the provisions of this section. Costs of operation, maintenance, repair, and rehabilitation of facilities funded under the authority of this Act shall be non-Federal responsibilities.

**Sec. 8. [Authorization of appropriations.]—(a) [Research and studies.]**—There are authorized to be appropriated to carry out section 3 of this Act \$5,000,000 per year for fiscal years 1997 through 2002. Of these amounts, up to \$1,000,000 in each fiscal year may be awarded to institutions of higher education, including United States-Mexico binational research foundations and interuniversity research programs established by the two countries, for research grants without any cost-sharing requirement.

**(b) [Demonstration and development.]**—There are authorized to be appropriated to carry out section 4 of this Act \$25,000,000 for fiscal years 1997 through 2002.

**Sec. 9. [Consultation.]**—In carrying out the provisions of this Act, the Secretary shall consult with the heads of other Federal agencies, including the Secretary of the Army, which have experience in conducting desalination research or operating desalination facilities. The authorization provided for in this Act shall not prohibit other agencies from carrying out separately authorized programs for desalination research or operations. (110 Stat. 3625; 42 U.S.C. § 10301)

October 11, 1996

WATER DESALINATION ACT OF 1996

4099

EXPLANATORY NOTE

**Legislative History.** S. 811, Public Law 104-298 in the 104<sup>th</sup> Congress. Reported in the Senate from Environment and Public Works; S. Rept. No. 104-254. Passed Senate May 3, 1996. Reported in the House from Resources; H.R. Rept. No. 104-790, Pt. 1. Passed House, amended September 24, 1996. Senate concurred in House amendments September 27, 1996.

**WATER RESOURCES DEVELOPMENT ACT OF 1996**

[Extract from] an Act to provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes. Act of October 12, 1996 (Public Law 104-303, 110 Stat. 3658; 33 U.S.C. 2201)

**Section 1. (a) [Short title.]**—This Act may be cited as the "Water Resources Development Act of 1996".

\* \* \* \* \*

**Sec. 101. [Project authorizations.]**—(a) [Projects with Chief’s Reports.]—

\* \* \* \* \*

**(1) [American River watershed, California.]**—

\* \* \* \* \*

**(C) [Interim operation agreement between the Bureau of Reclamation and the Sacramento Area Flood Control Agency.]**—Until such time as a comprehensive flood damage reduction plan for the American River watershed has been implemented, the Secretary of the Interior shall continue to operate the Folsom Dam and Reservoir to the variable 400,000/670,000 acre-feet of flood control storage capacity and shall extend the agreement between the Bureau of Reclamation and the Sacramento Area Flood Control Agency with respect to the watershed.

**(D) [Other costs.]**—The non-Federal interest shall be responsible for—

(i) all operation, maintenance, repair, replacement, and rehabilitation costs associated with the improvements carried out under this paragraph; and

(ii) 25 percent of the costs incurred for the variable flood control operation of the Folsom Dam and Reservoir during the 4-year period beginning on the date of the enactment of this Act and 100 percent of such costs thereafter. (110 Stat. 3662)

\* \* \* \* \*

EXPLANATORY NOTE

**Legislative History.** S. 640 (H.R. 3592), Reported in the Senate from Committee on Public Law 104-303 in the 104<sup>th</sup> Congress. Environment and Public Works; S. Rept. No.

October 12, 1996

WATER RESOURCES DEVELOPMENT ACT OF 1996 4101

104-170. Considered and passed the Senate July 11, 1996. H.R. 3592 reported in the House from Committee on Transportation and Infrastructure; House Rept. No. 104-695 accompanying HR. 3592 considered and passed the House and S. 640 was amended and passed in lieu by the Senate on July 30, 1996. House agreed to conference report H.R. Rept. No. 104-843 (Committee on Conference) on September 26, 1996. Senate agreed to conference report September 27, 1996.

### EMERGENCY DROUGHT RELIEF ACT OF 1996

An Act to provide emergency drought relief to the city of Corpus Christi, Texas, and the Canadian River Municipal Water Authority, Texas, and for other purposes. (Act of October 19, 1996, Public Law 104-318, 110 Stat. 3862)

**Section 1. [Short Title.]**—This Act may be cited as the "Emergency Drought Relief Act of 1996".

**Sec. 2. [Emergency drought relief.]-(a) [Corpus Christi.]-(1) [Emergency drought relief.]**—For the purpose of providing emergency drought relief, the Secretary of the Interior shall defer all principal and interest payments without penalty or accrued interest for the 5-year period beginning on the date of enactment of this Act for the city of Corpus Christi, Texas, and the Nueces River Authority under contract No. 6-07-01-X0675 involving the Nueces River Reclamation Project, Texas: *Provided*, That the city of Corpus Christi shall commit to use the funds thus made available exclusively for the acquisition of or construction of facilities related to alternative sources of water supply.

**(2) [Issuance of permits.]**—If construction of facilities related to alternative water supplies referred to in paragraph (1) requires a Federal permit for use of Bureau of Reclamation lands or facilities, the Secretary shall issue such permits within 90 days after the date of enactment of this Act, recognizing the environmental impact statement FES74-54 and the environmental assessment dated March 1991 (relating to the Lavaca-Navidad River Authority Pipeline permit).

**(b) [Canadian River Municipal Water Authority.]-(1) [Recognition of transfer of lands to the National Park Service.]**—All obligations and associated debt under contract No. 14-06-500-485 for land and related relocations transferred to the National Park Service to form the Lake Meredith National Recreation Area under Public Law 101-628, in the amount of \$4,000,000, shall be nonreimbursable. The Secretary shall recalculate the repayment schedule of the Canadian River Municipal Water Authority to reflect the determination of the preceding sentence and to implement the revised repayment schedule within one year of the date of enactment of this Act.

**(2) [Emergency drought relief.]**—The Secretary shall defer all principal and interest payments without penalty or accrued interest for the 3-year period beginning on the date of enactment of this Act for the Canadian River Municipal Water Authority under contract No. 14-06-500-485 as emergency drought relief to enable construction of additional water supply and conveyance facilities. (110 Stat. 3863)

October 19, 1996

EMERGENCY DROUGHT RELIEF ACT OF 1996 4103

EXPLANATORY NOTES

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

**Reference in the Text.** Extracts from the Act of November 28, 1990 (Public Law 101-628, 104 Stat. 4469) appear in Volume V in chronological order.

**Legislative History.** H.R. 3910, Public Law 104-318 in the 104<sup>th</sup> Congress. Reported in the House from Resources; House Report No. 104-770. Considered and passed the House September 10, 1996. Passed the Senate October 3, 1996.

**IRRIGATION PROJECT CONTRACT EXTENSION ACT OF 1996**

An Act to extend contracts between the Bureau of Reclamation and irrigation districts in Kansas and Nebraska, and for other purposes. (Act of October 19, 1996, Public Law 104-326, 110 Stat. 4000)

**Section 1. [Short title.]**—This Act may be cited as the "Irrigation Project Contract Extension Act of 1996".

**Sec. 2. [Extension of contracts—Bostwick Unit, Kansas—Bostwick Unit, Nebraska—Farwell Unit—Frenchman—Cambridge Unit—Frenchman Valley Unit—Kirwin Unit—Sargent Unit—Webster Unit.]**— The Secretary of the Interior shall extend the water service contracts for the following projects, entered into by the Secretary of the Interior under subsection (e) of section 9 of the Reclamation Project Act of 1939 (43 U.S.C. § 485h) and section 9(c) of the Act of December 22, 1944 (58 Stat. 891, chapter 665), for a period of 4 additional years after the dates on which each of the contracts, respectively, would expire but for this section:

(1) The Bostwick Unit (Kansas portion), Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Republic County, Jewell County, and Cloud County, Kansas.

(2) The Bostwick Unit (Nebraska portion), Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Harlan County, Franklin County, Webster County, and Nuckolls County, Nebraska.

(3) The Farwell Unit, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), and the Act of August 3, 1956 (70 Stat. 975, chapter 923), situated in Howard County, Sherman County, and Valley County, Nebraska.

(4) The Frenchman-Cambridge Unit, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Chase County, Frontier County, Hitchcock County, Furnas County, Red Willow County, and Harlan County, Nebraska.

(5) The Frenchman Valley Unit, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), as a component of the Pick-Sloan Missouri Basin Program, situated in Hayes County and Hitchcock County, Nebraska.

(6) The Kirwin Unit, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887,

October 19, 1996

IRRIGATION PROJECT CONTRACT EXTENSION ACT 4105

chapter 665), and the Flood Control Act of 1946 (60 Stat. 641, chapter 596), as a component of the Pick-Sloan Missouri Basin Program, situated in Phillips County, Smith County, and Osborne County, Kansas.

(7) The Sargent Unit, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), and the Flood Control Act of 1946 (60 Stat. 641, chapter 596), situated in Blaine County, Custer County, and Valley County, Nebraska.

(8) The Webster Unit, Missouri River Basin Project, consisting of the project constructed and operated under the Act of December 22, 1944 (58 Stat. 887, chapter 665), and the Flood Control Act of 1946 (60 Stat. 641, chapter 596), as a component of the Pick-Sloan Missouri Basin Program, situated in Rooks County and Osborne County, Kansas. (110 Stat. 4000)

EXPLANATORY NOTES

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

**References in the Text.** The Reclamation Project Act of 1939, Act of August 4, 1939 (ch. 418, 53 Stat. 1187; 43 U.S.C. § 485h) appears in Volume I at page 634. Amendments and annotations to the 1939 Act appear in Supplement I at page S124.

Extracts from the Flood Control Act of 1944, Act of December 22, 1944 (ch. 665, 58 Stat. 887) appear in Volume II at page 796. Amendments and annotations to the 1944 Act appear in Supplement I at page S147 and in

Supplement II at page S861.

Extracts from the Flood Control Act of 1946, Act of July 24, 1946 (ch. 596, 60 Stat. 641) appear in Volume II at page 832. Annotations to the 1946 Act appear in Supplement I at page S164.

**Legislative History.** S. 1649. Public Law 104-326 in the 104<sup>th</sup> Congress. Reported in the Senate from the Committee on Energy and Natural Resources. Senate Reports: No. 104-380. Passed Senate September 28, 1996. Passed House October 4, 1996.

**OROVILLE-TONASKET CLAIM SETTLEMENT AND CONVEYANCE ACT**

An Act to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District. (Act of April 14, 1997, Public Law 105-9, 111 Stat. 16)

**Section 1. [Short title.]**— This Act may be cited as the "Oroville-Tonasket Claim Settlement and Conveyance Act".

**Sec. 2. [Purposes.]**—The purposes of this Act are to authorize the Secretary of the Interior to implement the provisions of the negotiated Settlement Agreement including conveyance of the Project Irrigation Works, identified as not having national importance, to the District, and for other purposes.

**Sec. 3. [Definitions.]**—As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Reclamation" means the United States Bureau of Reclamation.

(3) The term "District" or "Oroville-Tonasket Irrigation District" means the project beneficiary organized and operating under the laws of the State of Washington, which is the operating and repayment entity for the Project.

(4) The term "Project" means the Oroville-Tonasket unit extension, Okanogan-Similkameen division, Chief Joseph Dam Project, Washington, constructed and rehabilitated by the United States under the Act of September 28, 1976 (Public Law 94-423, 90 Stat. 1324), previously authorized and constructed under the Act of October 9, 1962 (Public Law 87-762, 76 Stat. 761), under the Federal reclamation laws (including the Act of June 17, 1902 (ch. 1093, 32 Stat. 388), and Acts supplementary thereto or amendatory thereof).

EXPLANATORY NOTE

**References in the Text.** The Act of S1056.  
September 28, 1976 (Public Law 94-423, 90 Stat. 1324) referenced above appears in Volume IV at page 2950. Amendments and annotations of the 1976 Act appear in Supplement II at page  
The Act of October 9, 1962 (Public Law 87-762, 76 Stat. 761) referenced above appears in Volume III at page 1695.

(5) The term "Project Irrigation Works" means—

(A) those works actually in existence and described in subarticle 3(a) of the Repayment Contract, excluding Wildlife Mitigation Facilities, and depicted on the maps held by the District and Reclamation, consisting of the realty with improvements and real estate interests;

(B) all equipment, parts, inventories, and tools associated with the Project Irrigation Works realty and improvements and currently in the District's possession; and

April 14, 1997

OROVILLE-TONASKET CLAIM SETTLEMENT

4107

(C) all third party agreements.

(6)(A) The term "Basic Contract" means Repayment Contract No. 14-06-100-4442, dated December 26, 1964, as amended and supplemented, between the United States and the District;

(B) the term "Repayment Contract" means Repayment Contract No. 00-7-10-W0242, dated November 28, 1979, as amended and supplemented, between the United States and the District; and

(C) the term "third party agreements" means existing contractual duties, obligations, and responsibilities that exist because of all leases, licenses, and easements with third-parties related to the Project Irrigation Works, or the lands or rights-of-way for the Project Irrigation Works, but excepting power arrangements with the Bonneville Power Administration.

(7) The term "Wildlife Mitigation Facilities" means—

(A) land, improvements, or easements, or any combination thereof, secured for access to such lands, acquired by the United States under the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-667e); and

(B) all third party agreements associated with the land, improvements, or easements referred to in subparagraph (A).

EXPLANATORY NOTE

**References in the Text.** The Fish and Wildlife Coordination Act, Act of August 13, 1946 (ch. 965, 60 Stat. 1080) appears in Volume II at page 839. Amendments appear in Volume II at page 1434 and in Volume III at page 1823. Annotations appear in Supplement I at page S167.

(8) The term "Indian Trust Lands" means approximately 61 acres of lands identified on land classification maps on file with the District and Reclamation beneficially owned by the Confederated Tribes of the Colville Reservation (Colville Tribes) or by individual Indians, and held in trust by the United States for the benefit of the Colville Tribes in accordance with the Executive Order of April 9, 1872.

(9) The term "Settlement Agreement" means the Agreement made and entered on April 15, 1996, between the United States of America acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, and the Oroville-Tonasket Irrigation District.

(10) The term "operations and maintenance" means normal and reasonable care, control, operation, repair, replacement, and maintenance. (111 Stat. 16)

**Sec. 4.[Agreement authorization.]**—The Settlement Agreement is approved and the Secretary of the Interior is authorized to conduct all necessary and appropriate investigations, studies, and required Federal actions to implement the Settlement Agreement. (111 Stat. 17)

April 14, 1997

4108 OROVILLE-TONASKET CLAIM SETTLEMENT

**Sec. 5. [Consideration and satisfaction of outstanding obligations.]—**

**(a) [Consideration to United States.]—**Consideration by the District to the United States in accordance with the Settlement Agreement approved by this Act shall be—

(1) payment of \$350,000 by the District to the United States;

(2) assumption by the District of full liability and responsibility and release of the United States of all further responsibility, obligations, and liability for removing irrigation facilities constructed and rehabilitated by the United States under the Act of October 9, 1962 (Public Law 87-762, 76 Stat. 761), or referenced in section 201 of the Act of September 28, 1976 (Public Law 94-423, 90 Stat. 1324), and identified in Article 3(a)(8) of the Repayment Contract;

(3) assumption by the District of sole and absolute responsibility for the operations and maintenance of the Project Irrigation Works;

(4) release and discharge by the District as to the United States from all past and future claims, whether now known or unknown, arising from or in any way related to the Project, including any arising from the Project Irrigation Works constructed pursuant to the 1964 Basic Contract or the 1979 Repayment Contract;

(5) assumption by the District of full responsibility to indemnify and defend the United States against any third party claims associated with any aspect of the Project, except for that claim known as the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement; and

(6) continued obligation by the District to deliver water to and provide for operations and maintenance of the Wildlife Mitigation Facilities at its own expense in accordance with the Settlement Agreement.

**(b) [Responsibilities of United States.]—**In return the United States shall—

(1) release and discharge the District's obligation, including any delinquent or accrued payments, or assessments of any nature under the 1979 Repayment Contract, including the unpaid obligation of the 1964 Basic Contract;

(2) transfer title of the Project Irrigation Works to the District;

(3) assign to the District all third party agreements associated with the Project Irrigation Works;

(4) continue power deliveries provided under section 6 of this Act; and

(5) assume full responsibility to indemnify and defend the District against any claim known as the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed against the United States as of the date of the Settlement Agreement.

**(c) [Project construction costs.]—**The transfer of title authorized by this Act shall not affect the timing or amount of the obligation of the Bonneville Power Administration for the repayment of construction costs incurred by the Federal government under section 202 of the Act of September 28, 1976 (90 Stat. 1324,

April 14, 1997

OROVILLE-TONASKET CLAIM SETTLEMENT

4109

1326) that the Secretary of the Interior has determined to be beyond the ability of the irrigators to pay. The obligation shall remain charged to, and be returned to the Reclamation Fund as provided for in 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, 714). (111 Stat. 17)

EXPLANATORY NOTE

<b>References in the Text.</b> The Act of June 14, 1966 (Public Law 89-448, 80 Stat. 200) referenced above appears in Volume III at page 1870. Annotations to the 1966 Act appear in Supplement I at page S414.	The Act of September 7, 1966 (Public Law 89-561, 80 Stat. 707) referenced above appears in Volume III at page 1886. Annotations to the 1966 Act appear in Volume I at page S418.
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**Sec. 6. [Power.]**—Nothing in this Act shall be construed as having any affect [sic] on power arrangements under Public Law 94-423 (90 Stat. 1324). The United States shall continue to provide to the District power and energy for irrigation water pumping for the Project, including Dairy Point Pumping Plant. However, the amount and term of reserved power shall not exceed, respectively—

- (1) 27,100,000 kilowatt hours per year; and
- (2) 50 years commencing October 18, 1990.

The rate that the District shall pay the Secretary for such reserved power shall continue to reflect full recovery of Bonneville Power Administration transmission costs. (111 Stat. 18)

**Sec. 7. [Conveyance.]—(a) [Conveyance of interests of United States.]**—Subject to valid existing rights, the Secretary is authorized to convey all right, title, and interest, without warranties, of the United States in and to all Project Irrigation Works to the District. In the event a significant cultural resource or hazardous waste site is identified, the Secretary is authorized to defer or delay transfer of title to any parcel until required Federal action is completed.

**(b) [Retention of title to wildlife mitigation facilities.]**—The Secretary will retain title to the Wildlife Mitigation Facilities. The District shall remain obligated to deliver water to and provide for the operations and maintenance of the Wildlife Mitigation Facilities at its own expense in accordance with the Settlement Agreement.

**(c) [Reservation.]**—The transfer of rights and interests pursuant to subsection (a) shall reserve to the United States all oil, gas, and other mineral deposits and a perpetual right to existing public access open to public fishing, hunting, and other outdoor recreation purposes, and such other existing public uses. (111 Stat. 19)

**Sec. 8. [Repayment contract.]**—Upon conveyance of title to the Project Irrigation Works notwithstanding any parcels delayed in accordance with

April 14, 1997

4110 OROVILLE-TONASKET CLAIM SETTLEMENT

section 7(a), the 1964 Basic Contract, and the 1979 Repayment Contract between the District and Reclamation, shall be terminated and of no further force or effect.

**Sec. 9. [Indian trust responsibilities.]**—The District shall remain obligated to deliver water under appropriate water service contracts to Indian Trust Lands upon request from the owners or lessees of such land.

**Sec. 10. [Liability.]**—Upon completion of the conveyance of Project Irrigation Works under this Act, the District shall—

(1) be liable for all acts or omissions relating to the operation and use of the Project Irrigation Works that occur before or after the conveyance except for the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement;

(2) absolve the United States and its officers and agents of responsibility and liability for the design and construction including latent defects associated with the Project; and

(3) assume responsibility to indemnify and defend the United States against all claims whether now known or unknown and including those of third party claims associated with, arising from, or in any way related to, the Project except for the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement. (111 Stat. 19)

**Sec. 11. [Certain acts not applicable and termination of mandates.]—(a) [Reclamation laws.]**—All mandates imposed by the Reclamation Act of 1902, and all Acts supplementary thereto or amendatory thereof, including the Reclamation Reform Act of 1982, upon the Project Irrigation Works shall be terminated upon the completion of the transfers as provided by this Act and the Settlement Agreement.

**(b) [Relationship to other laws.]**—The transfer of title authorized by this Act shall not—

(1) be subject to the provisions of chapter 5 of title 5, United States Code (commonly known as the "Administrative Procedure Act"); or

(2) be considered a disposal of surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471 et seq.) and the Surplus Property Act of 1944 (50 U.S.C. App. § 1601 et seq.).

**(c) [Deauthorization.]**—Effective upon transfer of title to the District under this Act, that portion of the Oroville-Tonasket Unit Extension, Okanogan-Similkameen Division, Chief Joseph Dam Project, Washington, referred to in section 7(a) as the Project Irrigation Works is hereby deauthorized. After transfer of title, the District shall not be entitled to receive any further Reclamation benefits pursuant to the Reclamation Act of June 17, 1902, and Act supplementary thereto or amendatory thereof. (111 Stat. 20)

April 14, 1997

OROVILLE-TONASKET CLAIM SETTLEMENT

4111

EXPLANATORY NOTES

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

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

The Administrative Procedures Act (5 U.S.C. § 500 et seq.) referenced above appears in Supplement I at page S442.

Extracts from the Federal Property and Administrative Services Act of 1949 referenced

above appear in Supplement I at page S578. The cited sections (40 U.S.C. § 471 et seq.) do not appear herein.

Extracts from the Surplus Property Act of 1944 referenced above appear in Volume III at page 2041 and Supplement I at page S685. The reference cited (50 U.S.C. § 1601 et seq.) does not appear herein.

**Legislative History.** H.R. 412, Public Law 105-9 in the 105<sup>th</sup> Congress. H.R. Rept. No. 105-8; reported in the House from Resources. Passed House March 18, 1997. Passed Senate April 8, 1997.

**DEPARTMENT OF ENERGY STANDARDIZATION ACT OF 1997**

An Act to amend sections of the Department of Energy Organization Act that are obsolete or inconsistent with other statutes and to repeal a related section of the Federal Energy Administration Act of 1974. (Act of July 18, 1997, Public Law 105-28, 111 Stat. 245)

**Section 1. [Short title.]**—This Act may be cited as the "Department of Energy Standardization Act of 1997".

**Sec. 2. [Standardization of Department of Energy requirements with government-wide requirements.]**—(a) **[Department of Energy regulations.]**—Section 501 of the Department of Energy Organization Act (42 U.S.C. 7191) is amended—

- (1) by striking subsections (b) and (d),
- (2) by redesignating subsection (c) as subsection (b) and by redesignating subsections (e), (f), and (g) as subsections (c), (d), and (e), respectively, and
- (3) in subsection (c) (as so redesignated), by striking "subsections (b), (c), and (d)" and inserting "subsection (b)".

**(b) [Special requirements affecting advisory committees.]**—

**(1) [Section 624.]**—Section 624 of the Department of Energy Organization Act (42 U.S.C. 7234) is amended by (A) striking "(a)"; and (B) striking subsection (b).

**(2) [Technical and conforming amendment.]**—Section 17 of the Federal Energy Administration Act of 1974 (15 U.S.C. 776) is repealed.(111 Stat. 245; 42 U.S.C. 7101 note.)

EXPLANATORY NOTES

**References in the Text.** Section 501 of the Department of Energy Organization Act, Act of August 4, 1977 (Public Law 95-91, 91 Stat. 587) referenced above appears in Volume IV at page 3064.

Section 624 of the 1977 Act does not appear herein. Annotations and amendments to the 1977 Act appear in Supplement II at page S1063.

The Federal Energy Administration Act of 1974 referenced above does not appear herein.

**Legislative History.** H.R. 649, Public Law 105-28 in the 105<sup>th</sup> Congress. Reported in the House from Commerce; H.R. Repts. No. 105-11. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 105-26. Passed the House March 11, 1997. Passed Senate June 27, 1997.

September 30, 1997

4113

**"CLAIR ENGLE LAKE" REDESIGNATED "TRINITY LAKE"**

An Act to designate the reservoir created by Trinity Dam in the Central Valley project, California, as "Trinity Lake". (Act of Sept. 30, 1997, Public Law 105-44, 111 Stat. 1141; 16 U.S.C. § 460q note.)

**Section 1. [Designation of Trinity Lake.]—(a) [Designation.]—**The reservoir created by Trinity Dam in the Central Valley project, California, and designated as "Clair Engle Lake" by Public Law 88-662 (78 Stat. 1093) is hereby redesignated as "Trinity Lake".

**(b) [References.]—**Any reference in any law, regulation, document, record, map, or other paper of the United States to the reservoir referred to in subsection (a) shall be considered to be a reference to "Trinity Lake".

**(c) [Repeal of earlier designation.]—**Public Law 88-662 (78 Stat. 1093) is repealed. (111 Stat. 1141; 16 U.S.C. 4609 note.)

EXPLANATORY NOTES

**Reference in the Text.** The Act of October 13, 1964 (Public Law 88-662) referenced above appears in Volume III at page 1817.

**Legislative History.** H.R. 63 in the 105<sup>th</sup> Congress. Reported in the House from

Resources; H.R. Repts. No. 105-9. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 105-70. Passed the House March 11, 1997. Passed the Senate September 16, 1997.

**ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1998**

[Extracts from] an act making appropriations for energy and water development for the fiscal year ending September 30, 1998, and for other purposes. (Act of October 13, 1997, Public Law 105-62, 111 Stat. 1320)

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**TITLE V  
GENERAL PROVISIONS**

\* \* \* \* \*

**Sec. 505. [Animas-LaPlata-Use of appropriated funds restricted to certain activities.]** None of the funds made available in this Act to pay the salary of any officer or employee of the Department of the Interior may be used for the Animas-La Plata Project, in Colorado and New Mexico, except for: (1) activities required to comply with the applicable provisions of current law; and (2) continuation of activities pursuant to the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585).

**Sec. 506. Section 1621 of the Reclamation Wastewater and Groundwater Act amended-**Section 1621 of title XVI of the Reclamation Wastewater and Groundwater Act, Public Law 104-266 (43 U.S.C. § 390h-12g.) is amended by—

- (1) striking "study" in the section title and in subsection (a), and inserting "project" into the title and in subsection (a);
- (2) inserting in subsection (a) "planning, design, and construction of the" following "to participate in the"; and
- (3) inserting in subsection (a) "and nonpotable surface water" following "impaired ground water".

**Sec. 507. [Section 1208 of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act amended]** Section 1208(a)(2) of the Yavapai-Prescott Indian Treaty [sic] Settlement Act of 1994. (Public Law 103-434, 108 Stat. 4562) is amended by striking "\$4,000,000 for construction" and inserting "\$13,000,000, at 1997 prices, for construction plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes". (111 Stat. 1339)

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**Sec. 512. . . . [Short title.]**-This Act may be cited as the "Energy and Water Development Appropriations Act, 1998". (111 Stat. 1341)

October 13, 1997

ENERGY AND WATER APPROPRIATIONS ACT, 1998 4115

EXPLANATORY NOTES

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

**References in the Text.** The Colorado Ute Indian Water Rights Settlement Act of 1988, Act of November 3, 1988 (Public Law 100-585, 102 Stat. 2973) referenced in section 505 above appears in Volume V at page 3625.

Title XVI of the Reclamation Wastewater and Groundwater Act, Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4664; as amended by the Act of October 9, 1996, Public Law 104-266, 110 Stat. 3289) referenced in section 506 above appears in Volume V at page 3875. The 1996 amendatory Act (Public Law 104-266) also appears in Volume V at page 4087.

**Error in Section 507.** The Yavapai-Prescott Indian Treaty Settlement Act of 1994, is referring to "Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994" Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4526) in section 507 which appears in Volume V at page 4011.

**Legislative History.** H.R. 2203 (S. 1004), Public Law 105-62 in the 105<sup>th</sup> Congress. Reported in the House from Appropriations; H.R. Repts. Nos. 105-90 and 105-271 (Conference). Reported in the Senate from Appropriations; S. Repts. No. 105-44 accompanying S. 1004. Passed the House July 25, 1997. Passed the Senate, amended, in lieu of S.1004 July 28, 1997. House and Senate agreed to conference report September 30, 1997.

**UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY  
ACQUISITION POLICIES ACT OF 1970 AMENDMENTS**

An Act to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to prohibit an alien who is not lawfully present in the United States from receiving assistance under that Act. (Act of November 21, 1997, Public Law 105-117, 111 Stat. 2384; 42 U.S.C. § 4605)

**Section 1. [Displaced persons not eligible for assistance.]**—Title I of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) is amended by adding at the end the following:

"Sec. 104. [Displaced persons not eligible for assistance.]—(a) [In general.]—Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States.

"(b) [Determinations of eligibility.]—(1) [Promulgation of regulations.]—Not later than 1 year after the date of enactment of this section, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

"(2) [Contents of regulations.]—Regulations promulgated under paragraph (1) shall—

"(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

"(B) prohibit a displacing agency from discriminating against any displaced person;

"(C) ensure that each eligibility determination is fair and based on reliable information; and

"(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c).

"(c) [Exceptional and extremely unusual hardship.]—If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this Act if the displaced person would be eligible for the assistance but for subsection (a).

November 21, 1997

UNIFORM RELOCATION ASSISTANCE

4117

"(d) [Limitation on statutory construction.]—Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.". (111 Stat. 2384; 42 U.S.C. § 4605.)

EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Act of January 2, 1971 (Public Law 91-646, 84 Stat. 1894) referenced and amended by this Act appear in Volume IV at page 2617. Annotations and amendments to the 1971 Act appear in Supplement II at page S998.

**Sec. 2. [Duties of lead agency.]**—Section 213(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4633(a)) is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after paragraph (1) the following:

"(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 104;

"(3) ensure that displacing agencies implement section 104 fairly and without discrimination in accordance with section 104(b)(2)(B);". (111 Stat. 2385)

EXPLANATORY NOTE

**Legislative History.** S. 1258 (H.R. 849), accompanying H.R. 849. Passed Senate Public Law 105-117 in the 105<sup>th</sup> Congress. November 8, 1997. Passed House November 9, 1997. Reported in the House from Transportation and Infrastructure; H.R. Repts. No. 105-147

**IRRIGATION PROJECT CONTRACT EXTENSION ACT OF 1998**

An Act to extend certain contracts between the Bureau of Reclamation and irrigation water contractors in Wyoming and Nebraska that receive water from Glendo Reservoir. (Act of October 27, 1998, Public Law 105-293, 112 Stat. 2816)

**Section 1. [Short title.]**—This Act may be cited as the "Irrigation Project Contract Extension Act of 1998".

**Sec. 2. [Extension of contracts.]-(a) [In general.]**— The Secretary of the Interior shall extend each of the water service or repayment contracts for the Glendo Unit of the Missouri River Basin Project identified in subsection (c) until December 31, 2000.

**(b) [Extensions coterminous with cooperative agreement.]**—If the cooperative agreement entitled "Cooperative Agreement for Platte River Research and other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska", entered into by the Governors of the States of Wyoming, Nebraska, and Colorado and the Secretary of the Interior, is extended for a term beyond December 31, 2000, the contracts identified in subsection (c) shall be extended for the same term, but not to go beyond December 31, 2001. If the cooperative agreement terminates prior to December 31, 2000, the contracts identified in subsection (c) shall be subject to renewal on the date that the cooperative agreement terminates.

**(c) [Contracts.]**—The contracts identified in this subsection are—

(1) the contract between the United States and the New Grattan Ditch Company for water service from Glendo Reservoir (Contract No. 14-06-700-7591), dated March 7, 1974;

(2) the contract between the United States and Burbank Ditch for water service from Glendo Reservoir (Contract No. 14-06-700-6614), dated May 23, 1969;

(3) the contract between the United States and the Torrington Irrigation District for water service from Glendo Reservoir (Contract No. 14-06-700-1771), dated July 14, 1958;

(4) the contract between the United States and the Lucerne Canal and Power Company for water service from Glendo Reservoir (Contract No. 14-06-700-1740, as amended), dated June 12, 1958, and amended June 10, 1960;

(5) the contract between the United States and the Wright and Murphy Ditch Company for water service from Glendo Reservoir (Contract No. 14-06-700-1741), dated June 12, 1958;

(6) the contract between the United States and the Bridgeport Irrigation District for water service from Glendo Reservoir (Contract No. 14-06-700-8376, renumbered 6-07-70-W0126), dated July 9, 1976;

October 27, 1998

IRRIGATION PROJECT CONTRACT EXTENSION ACT 4119

(7) the contract between the United States and the Enterprises Irrigation District for water service from Glendo Reservoir (Contract No. 14-06-700-1742), dated June 12, 1958;

(8)(A) the contract between the United States and the Mitchell Irrigation District for an increase in carryover storage capacity in Glendo Reservoir (Contract No. 14-06-700-1743, renumbered 8-07-70-W0056 Amendment No. 1), dated March 22, 1985; and

(B) the contract between the United States and the Mitchell Irrigation District for water service from Glendo Reservoir (Contract No. 14-06-700-1743, renumbered 8-07-70-W0056), dated June 12, 1958; and

(9) the contract between the United States and the Central Nebraska Public Power and Irrigation District for repayment of allocated irrigation costs of Glendo Reservoir (Contract No. 5-07-70-W0734), dated December 31, 1984.

**(d) [Statutory construction.]**—Nothing in this section precludes the Secretary of the Interior from making an extension under subsection (a) or (b) in the form of annual extensions. (112 Stat. 2816)

EXPLANATORY NOTES

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

**Legislative History.** H.R. 2795 (S. 1398), Public Law 105-293 in the 105<sup>th</sup> Congress. Reported in the House from Resources; H.R.

Repts. No. 105-604. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 105-288 accompanying S. 1398. Passed the House September 15, 1998. Passed the Senate October 7, 1998.

October 27, 1998

4120

## FOLSOM DAM TEMPERATURE CONTROL DEVICES ACT

An Act to authorize the construction of temperature control devices at Folsom Dam in California.  
(Act of October 27, 1998, Public Law 105-295, 112 Stat. 2820)

### **Section 1. [Authorization to construct temperature control devices.]—**

**(a) [Folsom Dam.]—**The Secretary of the Interior is hereby authorized to construct in accordance with the draft environmental impact statement/environmental impact report for the Central Valley Supply contracts under Public Law 101-514 (section 206) and the report entitled "Assessment of the Beneficial and Adverse Impacts of Operating a Temperature Control Device (TCD) at the Water Supply Intakes of Folsom Dam", a temperature control device on Folsom Dam and necessary associated temperature monitoring facilities. The temperature control device and said associated temperature monitoring facilities shall be operated as an integral part of the Central Valley Project for the benefit and propagation of fall-run chinook salmon and steelhead trout in the American River, California.

#### EXPLANATORY NOTE

**Reference in the Text.** Extracts from the 104 Stat. 2074) referenced above, including Act of November 5, 1990 (Public Law 101-514, section 206, appear in Volume V at page 3659.

**(b) [Device on non-CVP facilities.]—**The Secretary of the Interior is hereby authorized to construct or assist in the construction of one or more temperature control devices on existing non-Federal facilities delivering Central Valley Project water supplies from Folsom Reservoir and necessary associated temperature monitoring facilities. These costs of construction of temperature control device and associated temperature monitoring facilities shall be nonreimbursable and operated by the non-Federal facility owner at its expense, in coordination with the Central Valley Project for the benefit and propagation of chinook salmon and steelhead trout in the American River, California.

**(c) [Authorization.]—**There is hereby authorized to be appropriated for the construction of a temperature control device on Folsom Dam and necessary associated temperature monitoring facilities the sum of \$5,000,000 (adjusted for inflation based on October 1997 prices). There is also authorized to be appropriated for the construction of a temperature control device on existing non-Federal facilities and necessary associated temperature monitoring facilities the sum of \$1,000,000 (October 1997 prices). There is also authorized to be appropriated, in addition thereto, such amounts as are required for operation,

October 27, 1998

FOLSOM DAM TEMPERATURE CONTROL DEVICES ACT 4121

maintenance, and replacement of the temperature control devices on Folsom Dam and associated temperature monitoring facilities.

EXPLANATORY NOTES

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

**Legislative History.** H.R. 4079, Public Law 105-295 in the 105<sup>th</sup> Congress. Reported in the House from Resources; H.R. Repts. No. 105-

717. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 105-378. Passed the House September 15, 1998. Passed the Senate October 7, 1998.

## CANADIAN RIVER PROJECT PREPAYMENT ACT

An Act to authorize prepayment of amounts due under a water reclamation project contract for the Canadian River Project, Texas. (Act of October 30, 1998, Public Law 105-316, 112 Stat. 2999)

**Section 1. [Short title.]**—This Act may be cited as the "Canadian River Project Prepayment Act".

**Sec. 2. [Definitions.]**—For the purposes of this Act:

(1) The term "Authority" means the Canadian River Municipal Water Authority, a conservation and reclamation district of the State of Texas.

(2) The term "Canadian River Project Authorization Act" means the Act entitled "An Act to authorize the construction, operation, and maintenance by the Secretary of the Interior of the Canadian River reclamation project, Texas", approved December 29, 1950 (ch. 1183; 64 Stat. 1124).

(3) The term "Project" means all of the right, title and interest in and to all land and improvements comprising the pipeline and related facilities of the Canadian River Project authorized by the Canadian River Project Authorization Act.

(4) The term "Secretary" means the Secretary of the Interior. (112 Stat. 2999; 43 U.S.C. § 600b note.)

**Sec. 3. [Prepayment and conveyance of project.]**—(a) **[In general.]**—(1) In consideration of the Authority accepting the obligation of the Federal Government for the Project and subject to the payment by the Authority of the applicable amount under paragraph (2) within the 360-day period beginning on the date of the enactment of this Act, the Secretary shall convey the Project to the Authority, as provided in section 2(c)(3) of the Canadian River Project Authorization Act (64 Stat. 1124).

(2) For purposes of paragraph (1), the applicable amount shall be—

(A) \$34,806,731, if payment is made by the Authority within the 270-day period beginning on the date of the enactment of this Act; or

(B) the amount specified in subparagraph (A) adjusted to include interest on that amount since the date of the enactment of this Act at the appropriate Treasury bill rate for an equivalent term, if payment is made by the Authority after the period referred to in subparagraph (A).

(3) If payment under paragraph (1) is not made by the Authority within the period specified in paragraph (1), this Act shall have no force or effect.

(b) **[Financing.]**—Nothing in this Act shall be construed to affect the right of the Authority to use a particular type of financing. (112 Stat. 2999; 43 U.S.C. § 600b note.)

**Sec. 4. [Relationship to existing operations.]**—(a) **[In general.]**— Nothing in this Act shall be construed as significantly expanding or otherwise changing the use or operation of the Project from its current use and operation.

October 30, 1998

CANADIAN RIVER PROJECT PREPAYMENT ACT 4123

**(b) [Future alterations.]**—If the Authority alters the operations or uses of the Project it shall comply with all applicable laws or regulations governing such alteration at that time.

**(c) [Recreation.]**—The Secretary of the Interior, acting through the National Park Service, shall continue to operate the Lake Meredith National Recreation Area at Lake Meredith.

**(d) [Flood control.]**—The Secretary of the Army, acting through the Corps of Engineers, shall continue to prescribe regulations for the use of storage allocated to flood control at Lake Meredith as prescribed in the Letter of Understanding entered into between the Corps, the Bureau of Reclamation, and the Authority in March and May 1980.

**(e) [Sanford Dam property.]**—The Authority shall have the right to occupy and use without payment of lease or rental charges or license or use fees the property retained by the Bureau of Reclamation at Sanford Dam and all buildings constructed by the United States thereon for use as the Authority's headquarters and maintenance facility. Buildings constructed by the Authority on such property, or past and future additions to Government constructed buildings, shall be allowed to remain on the property.

The Authority shall operate and maintain such property and facilities without cost to the United States. (112 Stat. 3000; 43 U.S.C. § 600b note.)

**Sec. 5. [Relationship to certain contract obligations.]—(a) [Payment obligations extinguished.]**—Provision of consideration by the Authority in accordance with section 3(b) shall extinguish all payment obligations under contract numbered 14-06-500-485 between the Authority and the Secretary.

**(b) [Operation and maintenance costs.]**—After completion of the conveyance provided for in section 3, the Authority shall have full responsibility for the cost of operation and maintenance of Sanford Dam, and shall continue to have full responsibility for operation and maintenance of the Project pipeline and related facilities.

**(c) [In general.]**—Rights and obligations under the existing contract No. 14-06-500-485 between the Authority and the United States, other than provisions regarding repayment of construction charge obligation by the Authority and provisions relating to the Project aqueduct, shall remain in full force and effect for the remaining term of the contract. (43 U.S.C. § 600b note.)

**Sec. 6. [Relationship to other laws.]**—Upon conveyance of the Project under this Act, the Reclamation Act of 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto shall not apply to the Project. (112 Stat. 3000; 43 U.S.C. § 600b note.)

**Sec. 7. [Liability.]**—Except as otherwise provided by law, effective on the date of conveyance of the Project under this Act, the United States shall not be liable under any law for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed property. (112 Stat. 3001; 43 U.S.C. § 600b note.)

October 30, 1998

4124 CANADIAN RIVER PROJECT PREPAYMENT ACT

EXPLANATORY NOTES

**Legislative History.** H.R. 3687, Public Law 105-316 in the 105<sup>th</sup> Congress. Passed House August 6, 1998. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 105-410. Passed the Senate October 14, 1998.

**LAND AND WATER CONSERVATION FUND  
ACT OF 1965 AMENDMENT**

An Act to amend the Land and Water Conservation Fund Act of 1965 to allow national park units that cannot charge an entrance or admission fee to retain other fees and charges. (Act of Oct. 30, 1998, Public Law 105-327, 112 Stat. 3055)

**Section 1. [Use of certain recreational fees.]** Section 4(I)(1)[sic] of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 4601-6a(I)(1)) is amended by adding at the end the following:

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

"(i) [Withholding of amounts.]—Notwithstanding subparagraph (A), section 315(c) of section 101(c) of the Omnibus Consolidated Receptions and Appropriations Act of 1996 (16 U.S.C. § 4601-6a note; Public Law 104-134), or section 107 of the Department of the Interior and Related Agencies Appropriations Act, 1998 (16 U.S.C. § 4601-6a note; Public Law 105-83), the Secretary of the Interior shall withhold from the special account under subparagraph (A) 100 percent of the fees and charges collected in connection with any unit of the National Park System at which entrance fees or admission fees cannot be collected by reason of deed restrictions.

"(ii) [Use of amounts.]—Amounts withheld under clause (i) shall be retained by the Secretary and shall be available, without further Act of appropriation, for expenditure by the Secretary for the unit with respect to which the amounts were collected for the purposes of enhancing the quality of the visitor experience, protection of resources, repair and maintenance, interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement." (112 Stat. 3055)

EXPLANATORY NOTES

**Editor's Note.** The citation "section 4(I)(1)" appears to be erroneous and should read "section 4(I)(4)".

**References in the Text.** The Land and Water Conservation Fund Act, Act of September 3, 1964 (Public Law 88-578, 78 Stat. 897) referenced above appears in Volume III at page 1785. Amendments and annotations appear in Supplement I at page S359 and in Supplement II at page S892.

The Omnibus Consolidated Receptions and

Appropriations Act of 1996 (16 U.S.C. 4601-6a note; Public Law 104-134), and the Department of the Interior and Related Agencies Appropriations Act, 1998 (16 U.S.C. 4601-6a note; Public Law 105-83) do not appear herein.

**Legislative History.** S. 1333, Public Law 105-327 in the 105<sup>th</sup> Congress. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 105-311. Passed Senate October 2, 1998. Passed House October 10, 1998.

**MINIDOKA PROJECT CONVEYANCE OF FACILITIES  
ACT OF 1998**

An Act to authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes. (Act of November 3, 1998, Public Law 105-351, 112 Stat. 3219)

**Section 1. [Conveyance of facilities.]-~~(a)~~ [Definitions.]**—In this section:

(1) **[Burley.]**—The term "Burley" means the Burley Irrigation District, an irrigation district organized under the law of the State of Idaho.

(2) **[Division.]**—The term "Division" means the Southside Pumping Division of the Minidoka project, Idaho.

(3) **[Secretary.]**—The term "Secretary" means the Secretary of the Interior.

**(b) [Conveyance.]-~~(1)~~ [In general.]**—The Secretary shall, without consideration or compensation except as provided in this section, convey to Burley, by quitclaim deed or patent, all right, title, and interest of the United States in and to acquired lands, easements, and rights-of-way of or in connection with the Division, together with the pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, buildings, transmission lines, and other improvements or appurtenances to the land or used for the delivery of water from the headworks (but not the headworks themselves) of the Southside Canal at the Minidoka Dam and reservoir to land in Burley, including all facilities used in conjunction with the Division (including the electric transmission lines used to transmit electric power for the operation of the pumping facilities of the Division and related purposes for which the allocable construction costs have been fully repaid by Burley).

(2) **[Costs.]**—The first \$80,000 in administrative costs of transfer of title and related activities shall be paid in equal shares by the United States and Burley, and any additional amount of administrative costs shall be paid by the United States.

**(c) [Water rights.]-~~(1)~~ [Transfer.]**— (A) Subject to subparagraphs (B) and (C), the Secretary shall transfer to Burley, through an agreement among Burley, the Minidoka Irrigation District, and the Secretary, in accordance with and subject to the law of the State of Idaho, all natural flow, waste, seepage, return flow, and groundwater rights held in the name of the United States—

(i) for the benefit of the Minidoka Project or specifically for the Burley Irrigation District;

(ii) that are for use on lands within the Burley Irrigation District; and

(iii) which are set forth in contracts between the United States and Burley or in the decree of June 20, 1913 of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls,

November 3, 1998

MINIDOKA PROJECT CONVEYANCE OF FACILITIES ACT 4127

in the case of *Twin Falls Canal Company v. Charles N. Foster, et al.*, and commonly referred to as the "Foster decree".

(B) Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such manner so as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States.

(C) The transfer of water rights in accordance with this paragraph shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other project water user.

**(2) [Allocation of storage space.]**—The Secretary shall provide an allocation to Burley of storage space in Minidoka Reservoir, American Falls Reservoir, and Palisades Reservoir, as described in Burley Contract Nos. 14-06-100-2455 and 1406-W-48, subject to the obligation of Burley to continue to assume and satisfy its allocable costs of operation and maintenance associated with the storage facilities operated by the Bureau of Reclamation.

**(d) [Project reserved power.]**—The Secretary shall continue to provide Burley with project reserved power from the Minidoka Reclamation Power Plant, Palisades Reclamation Power Plant, Black Canyon Reclamation Power Plant, and Anderson Ranch Reclamation Power Plant in accordance with the terms of the existing contracts, including any renewals thereof as provided in such contracts.

**(e) [Savings.]**—(1) Nothing in this Act or any transfer pursuant thereto shall affect the right of Minidoka Irrigation District to the joint use of the gravity portion of the Southside Canal, subject to compliance by the Minidoka Irrigation District with the terms and conditions of a contract between Burley and Minidoka Irrigation District, and any amendments or changes made by agreement of the irrigation districts.

(2) Nothing in this Act shall affect the rights of any person or entity except as may be specifically provided herein.

**(f) [Liability.]**—Effective on the date of conveyance of the project facilities, described in section (1)(b)(1), the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.).

**(g) [Completion of conveyance.]**—**(1) [In general.]**—The Secretary shall complete the conveyance under subsection (b) (including such action as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.)) not later than 2 years after the date of enactment of this Act.

November 3, 1998

4128 MINIDOKA PROJECT CONVEYANCE OF FACILITIES ACT

**(2) [Report deadline.]**—The Secretary shall provide a report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate within eighteen months from the date of enactment of this Act on the status of the transfer, any obstacles to completion of the transfer as provided in this section, and the anticipated date for such transfer. (112 Stat. 3219)

EXPLANATORY NOTES

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

**References in the Text.** Extracts from the Federal Tort Claims Act, Act of June 25, 1948 (ch. 646, 62 Stat. 869; 28 U.S.C. 2671 et seq.) referenced above appear in Volume II at page 884. Amendments and annotations appear in Supplement I at page S175.

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.) referenced above appears in Volume IV at page 2492.

**Legislative History.** S. 538, Public Law 105-351 in the 105<sup>th</sup> Congress. Reported in the Senate from Energy and Natural Resources; S. Repts. No. 145-131. Passed Senate June 25, 1998. Passed House October 12, 1998.

November 3, 1998

4129

**FALL RIVER WATER USERS DISTRICT RURAL WATER  
SYSTEM ACT OF 1998**

An Act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes. (Act of November 3, 1998, Public Law 105-352, 112 Stat. 3222)

**Section 1. [Short title.]**—This Act may be cited as the "Fall River Water Users District Rural Water System Act of 1998".

**Sec. 2. [Findings and purposes.]—(a) [Findings.]**—Congress finds that—

(1) there are insufficient water supplies of reasonable quality available to the members of the Fall River Water Users District Rural Water System located in Fall River County, South Dakota, and the water supplies that are available are of poor quality and do not meet minimum health and safety standards, thereby posing a threat to public health and safety;

(2) past cycles of severe drought in the southeastern area of Fall River County have left residents without a satisfactory water supply, and, during 1990, many home owners and ranchers were forced to haul water to sustain their water needs;

(3) because of the poor quality of water supplies, most members of the Fall River Water Users District are forced to either haul bottled water for human consumption or use distillers;

(4) the Fall River Water Users District Rural Water System has been recognized by the State of South Dakota; and

(5) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Fall River Water Users District Rural Water System members consists of a Madison Aquifer well, 3 separate water storage reservoirs, 3 pumping stations, and approximately 200 miles of pipeline.

**(b) [Purposes.]**—The purposes of this Act are—(1) to ensure a safe and adequate municipal, rural, and industrial water supply for the members of the Fall River Water Users District Rural Water System in Fall River County, South Dakota;

(2) to assist the members of the Fall River Water Users District in developing safe and adequate municipal, rural, and industrial water supplies; and

(3) to promote the implementation of water conservation programs by the Fall River Water Users District Rural Water System. (112 Stat. 3222)

**Sec. 3. [Definitions.]**—In this Act:

**(1) [Engineering report.]**—The term "engineering report" means the study entitled "Supplemental Preliminary Engineering Report for Fall River Water Users District" published in August 1995.

November 3, 1998

4130 FALL RIVER WATER USERS DISTRICT RURAL WATER

**(2) [Project construction budget.]**—The term "project construction budget" means the description of the total amount of funds that are needed for the construction of the water supply system, as described in the engineering report.

**(3) [Pumping and incidental operational requirements.]**—The term "pumping and incidental operational requirements" means all power requirements that are incidental to the operation of intake facilities, pumping stations, water treatment facilities, cooling facilities, reservoirs, and pipelines to the point of delivery of water by the Fall River Water Users District Rural Water System to each entity that distributes water at retail to individual users.

**(4) [Secretary.]**—The term "Secretary" means the Secretary of Agriculture.

**(5) [Water supply system.]**—The term "water supply system" means the Fall River Water Users District Rural Water System, a nonprofit corporation, established and operated substantially in accordance with the engineering report. (112 Stat. 3223)

**Sec. 4. [Federal assistance for water supply system.]—(a) [In general—Grants.]**—The Secretary shall make grants to the water supply system for the Federal share of the costs of the planning and construction of the water supply system.

**(b) [Service area.]**—The water supply system shall provide for safe and adequate municipal, rural, and industrial water supplies, mitigation of wetlands areas, and water conservation within the boundaries of the Fall River Water Users District, described as follows: bounded on the north by the Angostura Reservoir, the Cheyenne River, and the line between Fall River and Custer Counties, bounded on the east by the line between Fall River and Shannon Counties, bounded on the south by the line between South Dakota and Nebraska, and bounded on the west by the Igloo-Provo Water Project District.

**(c) [Amount of grants.]**—Grants made available under subsection (a) to the water supply system shall not exceed the Federal share under section 9.

**(d) [Limitation on availability of construction funds.]**—The Secretary shall not obligate funds for the construction of the water supply system until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the water supply system; and

(2) a final engineering report and plan for a water conservation program have been prepared and submitted to Congress for a period of not less than 90 days before the commencement of construction of the system. (112 Stat. 3223)

EXPLANATORY NOTE

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

November 3, 1998

FALL RIVER WATER USERS DISTRICT RURAL WATER 4131

**Sec. 5. [Mitigation of fish and wildlife losses.]**—Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the water supply system shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction, as provided in the engineering report. (112 Stat. 3224)

**Sec. 6. [Use of Pick-Sloan power.]—(a) [Capacity and energy required.]**—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, the Western Area Power Administration shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water supply system during the period beginning May 1 and ending October 31 of each year.

**(b) [Conditions.]**—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water supply system shall be operated on a not for-profit basis.

(2) The water supply system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a qualified preference power supplier that itself purchases power from the Western Area Power Administration.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be the firm power rate schedule of the Pick-Sloan Eastern Division of the Western Area Power Administration in effect when the power is delivered by the Administration.

(4) It shall be agreed by contract among—

(A) the Western Area Power Administration;

(B) the power supplier with which the water supply system contracts under paragraph (2);

(C) the power supplier of the entity described in subparagraph (B); and

(D) the Fall River Water Users District; that in the case of the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water supply system, except that the power supplier of the water supply system shall not be precluded from including, in the charges of the supplier to the water system for the electric service, the other usual and customary charges of the supplier.

**Sec. 7. [No limitation on water projects in State.]**—This Act does not limit the authorization for water projects in South Dakota under law in effect on or after the date of enactment of this Act.

**Sec. 8. [Water rights.]**—Nothing in this Act—(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;

(3) preempts or modifies any Federal or State law, or interstate compact,

November 3, 1998

4132 FALL RIVER WATER USERS DISTRICT RURAL WATER

dealing with water quality or disposal; or

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

**Sec. 9. [Federal share.]**—The Federal share under section 4 shall be 70 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995. (112 Stat. 3225)

**Sec. 10. [Non-Federal share.]**—The non-Federal share under section 4 shall be 30 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

**Sec. 11. [Construction oversight.]—(a) [Authorization.]**—The Secretary of the Interior, acting through the Director of the Bureau of Reclamation, may provide construction oversight to the water supply system for areas of the water supply system.

**(b) [Project oversight administration.]**—The amount of funds used by the Secretary for planning and construction of the water supply system may not exceed an amount equal to 3 percent of the amount provided in the total project construction budget for the portion of the project to be constructed in Fall River County, South Dakota.

**Sec. 12. [Authorization of appropriations.]**—There are authorized to be appropriated—

(1) \$3,600,000 for the planning and construction of the water system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995. (112 Stat. 3225)

EXPLANATORY NOTES

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

**Legislative History.** S. 744, Public Law 105-352 in the 105<sup>th</sup> Congress. Reported in the

Senate from Energy and Natural Resources; S. Repts. No. 105-369. Passed Senate October 7, 1998. Passed House October 12, 1998.

November 10, 1998

4133

## FEDERAL REPORTS ELIMINATION ACT OF 1998

[Extracts from] an Act to eliminate unnecessary and wasteful Federal reports. (Act of November 10, 1998, Public Law 105-362, 112 Stat. 3280)

**Section 1. [Short title and table of contents.]—(a) [Short title.]—** This Act may be cited as the "Federal Reports Elimination Act of 1998".

\* \* \* \* \*

### TITLE IV—DEPARTMENT OF ENERGY

#### **Sec. 401. [Reports eliminated.]—**

\* \* \* \* \*

(b) **[Electric Utility Participation Study.]—**Section 625 of the Energy Policy Act of 1992 (42 U.S.C. § 13295) is repealed. (112 Stat. 3282)

#### EXPLANATORY NOTE

**Reference in the Text.** Extracts from the Energy Policy Act of 1992 referenced above appear in Volume V at page 3766.

\* \* \* \* \*

### TITLE IX—DEPARTMENT OF THE INTERIOR

#### **Sec. 901. [Reports eliminated.]—**

\* \* \* \* \*

(c) **[Water quality of the Sacramento-San Joaquin Delta and San Francisco Bay estuarine systems.]—**Section 4 of Public Law 96-375 (94 Stat. 1506) is amended by striking the second sentence.

#### EXPLANATORY NOTE

**Reference in the Text.** Section 4 of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1506) referenced above appears in Volume IV at page 3217. Amendments and annotations to the 1980 Act appear in Supplement II at page S1084.

November 10, 1998

4134 FEDERAL REPORTS ELIMINATION ACT OF 1998

**(d) [Colorado River Floodway maps.]—(1) [Repeal of requirements.]**—Section 5(b) of the Colorado River Floodway Protection Act (43 U.S.C. § 1600c(b)) is amended—

(A) by striking "(b)(1)" and inserting "(b)";

(B) by striking paragraphs (2) and (3); and

(C) by redesignating clauses (i) and (ii) as paragraphs (1) and (2), respectively.

**(2) [Conforming amendment.]**—Section 5(c)(1) of such Act (43 U.S.C. § 1600c(c)(1)) is amended by striking "the appropriate officers referred to in paragraph (3) of subsection (b)," and inserting "appropriate chief executive officers of States, counties, municipalities, water districts, Indian tribes, or equivalent jurisdictions in which the Floodway is located,".

EXPLANATORY NOTE

**Reference in the Text.** Section 5 of the Colorado River Floodway Protection Act, Act of October 8, 1986 (Public Law 99-450, 100 Stat. 1129) referenced above appears in Volume V at page 3478.

**(e) [Certification of adequate soil survey of land classification.]—(1) [1953 Act.]**—The first section of title I of the Interior Department Appropriation Act, 1953, is amended in the matter under the heading "CONSTRUCTION AND REHABILITATION" under the heading "BUREAU OF RECLAMATION" (66 Stat. 451) by striking ": *Provided further*, That no part of this or any other appropriation" and all that follows through "means of irrigation". (43 U.S.C. § 390a note.)

**(2) [1954 Act.]**—The first section of title I of the Interior Department Appropriation Act, 1954 (43 U.S.C. § 390a; 67 Stat. 266) is amended—

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

(B) by striking "Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows." (as added by section 10 of the Garrison Diversion Unit Reformulation Act of 1986 (100 Stat. 426)). (112 Stat. 3289)

EXPLANATORY NOTE

**References in the Text.** The first section of title I of the Interior Department Appropriations Act, 1953, Act of July 9, 1952 (ch. 597, 66 Stat. 451) referenced above does not appear herein. The first section of title I of the Interior Department Appropriations Act, 1954, Act of July 31, 1953 (ch. 298, 67 Stat. 266) referenced above appears in Volume II at page 1115.

November 10, 1998

FEDERAL REPORTS ELIMINATION ACT OF 1998 4135

**(f) [Claims submitted from the Teton Dam failure.]**—Section 8 of Public Law 94-400 (90 Stat. 1213) is repealed. (112 Stat. 3289)

EXPLANATORY NOTE

**Reference in the Text.** Section 8 of the Act of September 7, 1976 (Public Law 95-400, 90 Stat. 1213) referenced above appears in Volume IV at page 2947. Amendments and annotations to the 1976 Act appear in Supplement II at page S1055.

\* \* \* \* \*

EXPLANATORY NOTES

**Codification.** Certain provisions of this Act bearing a U.S. Code citation are codified in the U.S. Code. Those provisions not bearing a U.S. Code citation are not codified.

**Legislative History.** S. 1364, Public Law 105-362 in the 105<sup>th</sup> Congress. Reported in the Senate from Governmental Affairs; S. Repts. No. 105-187. Passed Senate June 10, 1998. Passed House October 13, 1998, amended. Senate concurred in House amendment with an amendment. House concurred in Senate amendment October 21, 1998.

November 12, 1998

4136

## **SALTON SEA RECLAMATION ACT OF 1998**

An act to direct the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a feasibility study and construct a project to reclaim the Salton Sea, and for other purposes. (Act of November 12, 1998, Public Law 105-372 , 112 Stat. 3377)

**Section 1. [Short title-Table of contents.]-(a) [Short title.]-** This Act may be cited as the "Salton Sea Reclamation Act of 1998".

**(b) [Table of contents.]-**The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

### **TITLE I-SALTON SEA FEASIBILITY STUDY**

Sec. 101. Salton Sea Feasibility study authorization.

Sec. 102. Concurrent wildlife resources studies.

Sec. 103. Salton Sea National Wildlife Refuge renamed as Sonny Bono Salton Sea National Wildlife Refuge.

### **TITLE II-EMERGENCY ACTION TO IMPROVE WATER QUALITY IN THE ALAMO RIVER AND NEW RIVER**

Sec. 201. Alamo River and New River irrigation drainage water.

**Sec. 2. [Definitions.]-**In this Act: (1) The term "Committees" means the Committee on Resources and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environmental and Public Works of the Senate.

(2) The term "Salton Sea Authority" means the Joint Powers Authority by that name established under the laws of the State of California by a Joint Power Agreement signed on June 2, 1993.

(3) The term "Secretary" means the Secretary of the Interior, acting through the Bureau of Reclamation.

### **TITLE I-SALTON SEA FEASIBILITY STUDY**

**Sec. 101. [Salton Sea Feasibility Study authorization.]-**

**(a) [Deadline.]-**No later than January 1, 2000, the Secretary, in accordance with this section, shall complete all feasibility studies and cost analyses for the options set forth in subsection (b)(2)(A)necessary for Congress to fully evaluate such options.

November 12, 1998

SALTON SEA RECLAMATION ACT OF 1998

4137

**(b) [Feasibility study.]—(1) [In general.]—**

(A) The Secretary shall complete all studies, including, but not limited to environmental and other reviews, of the feasibility and benefit-cost of various options that permit the continued use of the Salton Sea as a reservoir for irrigation drainage and:

- (i) reduce and stabilize the overall salinity of the Salton Sea;
- (ii) stabilize the surface elevation of the Salton Sea;
- (iii) reclaim, in the long term, healthy fish and wildlife resources and their habitats; and
- (iv) enhance the potential for recreational uses and economic development of the Salton Sea.

(B) Based solely on whatever information is available at the time of submission of the report, the Secretary shall:

- (i) identify any options he deems economically feasible and cost effective;
- (ii) identify any additional information necessary to develop construction specifications; and
- (iii) submit any recommendations, along with the results of the study to the Committees no later than January 1, 2000.

(C)(i) The Secretary shall carry out the feasibility study in accordance with a memorandum of understanding entered into by the Secretary, the Salton Sea Authority, and the Governor of California.

(ii) The memorandum of understanding shall, at a minimum, establish criteria for evaluation and selection of options under subparagraph (2)(A), including criteria for determining benefit and the magnitude and practicability of costs of construction, operation, and maintenance of each option evaluated.

**(2) [Options to be considered.]—Options considered in the feasibility study—**

(A) shall consist of, but need not be limited to—

- (i) use of impoundments to segregate a portion of the waters of the Salton Sea in one or more evaporation ponds located in the Salton Sea basin;
- (ii) pumping water out of the Salton Sea;
- (iii) augmented flows of water into the Salton Sea;
- (iv) a combination of the options referred to in clauses (i), (ii), and (iii); and

(v) any other economically feasible remediation option the Secretary considers appropriate and for which feasibility analyses and cost estimates can be completed by January 1, 2000;

(B) shall be limited to proven technologies; and

(c) shall not include any option that—

(i) relies on the importation of any new or additional water from the Colorado River; or

(ii) is inconsistent with the provisions of subsection (c).

**(3) [Assumptions.]**—In evaluating options, the Secretary shall apply assumptions regarding water inflows into the Salton Sea Basin that encourage water conservation, account for transfers of water out of the Salton Sea Basin, and are based on a maximum likely reduction in inflows into the Salton Sea Basin which could be 800,000 acre-feet or less per year.

**(4) [Consideration of costs.]**—In evaluating the feasibility of options, the Secretary shall consider the ability of Federal, tribal, State and local government sources and private sources to fund capital construction costs and annual operation, maintenance, energy, and replacement costs and shall set forth the basis for any cost sharing allocations as well as anticipated repayment, if any, of Federal contributions.

**(c) [Relationship to other law.]—(1) [Reclamation laws.]**—Activities authorized by this Act shall not be subject to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. § 391 et seq.), and Acts amendatory thereof and supplemental thereto. Amounts expended for those activities shall be considered nonreimbursable for purposes of those laws and shall not be considered to be a supplemental or additional benefit for purposes of the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. § 390aa et seq.).

**(2) [Preservation of rights and obligations with respect to the Colorado River.]**—This Act shall not be considered to supersede or otherwise affect any treaty, law, decree, contract, or agreement governing use of water from the Colorado River. All activities taken under this Act must be carried out in a manner consistent with rights and obligations of persons under those treaties, laws, decrees, contracts, and agreements.

**Sec. 102. [Concurrent wildlife resources studies.]—(a) [In general.]**—The Secretary shall provide for the conduct, concurrently with the feasibility study under section 101(b), of studies of hydrology, wildlife pathology, and toxicology relating to wildlife resources of the Salton Sea by Federal and non-Federal entities.

**(b) [Selection of topics and management of studies.]—(1) [Establishment of Salton Sea Research Management Committee.]**—The Secretary shall establish a committee to be known as the "Salton Sea Research Management Committee". The committee shall select the topics of studies under this section and manage those studies.

**(2) [Membership.]**—The committee shall consist of the following five members:

- (A) The Secretary.
- (B) The Governor of California.
- (C) The Executive Director of the Salton Sea Authority.

November 12, 1998

SALTON SEA RECLAMATION ACT OF 1998

4139

(D) The Chairman of the Torres Martinez Desert Cahuilla Tribal Government.

(E) The Director of the California Water Resources Center.

(c) **[Coordination.]**—The Secretary shall require that studies under this section are coordinated through the Science Subcommittee which reports to the Salton Sea Research Management Committee. In addition to the membership provided for by the Science Subcommittee's charter, representatives shall be invited from the University of California, Riverside; the University of Redlands; San Diego State University; the Imperial Valley College; and Los Alamos National Laboratory.

(d) **[Peer review.]**—The Secretary shall require that studies under this section are subjected to peer review.

(e) **[Authorization of appropriations.]**—For wildlife resources studies under this section there are authorized to be appropriated to the Secretary, through accounts within the Fish and Wildlife Service, exclusively, \$5,000,000.

(f) **[Advisory Committee Act.]**—The committee, and its activities, are not subject to the Federal Advisory Commission [sic] Act (5 U.S.C. App.).

EXPLANATORY NOTE

The Federal Advisory Committee Act, as S482.  
amended, appears in Supplement I at page

**Sec. 103. [Salton Sea National Wildlife Refuge renamed as Sonny Bono Salton Sea National Wildlife Refuge.]—(a) [Refuge renamed.]**—The Salton Sea National Wildlife Refuge, located in Imperial County, California, is hereby renamed and shall be known as the "Sonny Bono Salton Sea National Wildlife Refuge". (16 U.S.C. 668dd note [table].)

(b) **[References.]**—Any reference in any statute, rule, regulation, Executive order, publication, map, or paper or other document of the United States to the Salton Sea National Wildlife Refuge is deemed to refer to the Sonny Bono Salton Sea National Wildlife Refuge. (112 Stat. 3379)

TITLE II—EMERGENCY ACTION TO IMPROVE WATER QUALITY IN  
THE ALAMO RIVER, AND NEW RIVER

**Sec. 201. [Alamo River and New River irrigation drainage water.]—(a) [River enhancement.]**—

(1) **[In general.]**—The Secretary is authorized and directed to promptly conduct research and construct river reclamation and wetlands projects to improve water quality in the Alamo River and New River, Imperial County, California, by treating water in those rivers and irrigation drainage water that flows into those rivers.

November 12, 1998

4140

SALTON SEA RECLAMATION ACT OF 1998

**(2) [Acquisitions.]**—The Secretary may acquire equipment, real property from willing sellers, and interests in real property (including site access) from willing sellers as needed to implement actions under this section if the State of California, a political subdivision of the State, or Desert Wildlife Unlimited has entered into an agreement with the Secretary under which the State, subdivision, or Desert Wildlife Unlimited, respectively, will, effective 1 year after the date that systems for which the acquisitions are made are operational and functional—

(A) accept all right, title, and interest in and to the equipment, property, or interests; and

(B) assume responsibility for operation and maintenance of the equipment, property, or interests.

**(3) [Transfer of title deadline.]**—Not later than 1 year after the date a system developed under this section is operational and functional, the Secretary shall transfer all right, title, and interest of the United States in and to all equipment, property, and interests acquired for the system in accordance with the applicable agreement under paragraph (2).

**(4) [Monitoring and other actions.]**—The Secretary shall establish a long-term monitoring program to maximize the effectiveness of any wetlands developed under this title and may implement other actions to improve the efficacy of actions implemented pursuant to this section.

**(b) [Cooperation.]**—The Secretary shall implement subsection (a) in cooperation with Desert Wildlife Unlimited, the Imperial Irrigation District, California, and other interested persons.

**(c) [Federal water pollution control.]**—Water withdrawn solely for the purpose of a wetlands project to improve water quality under subsection (a)(1), when returned to the Alamo River or New River, shall not be required to meet water quality standards under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

**(d) [Authorization of appropriations.]**—For river reclamation and other irrigation drainage water treatment actions under this section, there are authorized to be appropriated to the Secretary \$3,000,000. (112 Stat. 3380)

EXPLANATORY NOTES

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

**References in the Text.** The Federal Water Pollution Control Act, Act of July 9, 1956 (ch. 518, 70 Stat. 498) referenced above appears in Volume II at page 1278. The Act of October 18, 1972 (Public Law 92-500, 86 Stat. 816) which substantially amended the 1956 Act appears in

Volume IV at page 2664.

**Legislative History.** H.R. 3267, Public Law 105-372 in the 105<sup>th</sup> Congress. Reported in the House from the Resources; H.R. Repts. No. 105-621, Pt. 1. Passed House July 15, 1998. Passed the Senate, amended, October 13, 1998. House concurred in Senate amendments October 21, 1998.